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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6989; Airspace Docket No. 16–ACE–7]

Amendment of Class E Airspace; Tekamah, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Tekamah Municipal Airport, Tekamah, NE. Controlled airspace is necessary to accommodate standard instrument approach procedures (SIAP) at Tekamah Municipal Airport for the safety and management of Instrument Flight Rules (IFR) operations at airport.

DATES: Effective 0901 UTC, January 5, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace at Tekamah Municipal Airport, Tekamah, NE.

History

On June 28, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM), (81 FR 41899) Docket No. FAA–2016–6989, to amend Class E airspace at Tekamah Municipal Airport, Tekamah, NE. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tekamah Municipal Airport, Tekamah, NE, with a segment extending from the 6.5-mile radius to 9.7 miles southeast of the airport. Airspace reconfiguration is necessary to accommodate the SIAPs at Tekamah Municipal Airport for compliance with FAA Joint Order 7400.2K, Procedures for Handling Airspace Matters. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Tekamah, NE [Amended]

Tekamah Municipal Airport, NE.
(Lat 41°45′49″ N., long. 96°10′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tekamah Municipal Airport, and within 4 miles each side of the 154° bearing from the airport extending from the 6.5-mile radius of the airport to 9.7 miles southeast of the airport.

Issued in Fort Worth, Texas, on September 19, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–23114 Filed 9–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–4648; Airspace Docket No. 16–AAL–1]

RIN 2120–AA66

Modification of Colored Federal Airway B–1; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action renames Blue Federal airway B–1 in Alaska to B–12. This is necessary due to an automation issue that conflicts with an identically named airway in Taiwan. No air traffic services with be affected by this action.

DATES: Effective date 0901 UTC, January 5, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.11A and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route structure in the northwest United States to maintain the efficient flow of air traffic.

History

Recently, Anchorage Air Route Traffic Control Center (ARTCC) automation was rejecting certain flight plans. The FAA discovered that the rejected flight plans contained the airway in Taiwan, B–1. This number is also used to identify a route in southern Alaska. When Anchorage ARTCC automation tried to parse the route, it would attempt to reconcile the filed Taiwanese airway, B–1, with the fixes stored in the Anchorage database. The fixes would not match and the flight plan would fail the logic check and be rejected, resulting in labor-intensive manual coordination.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.11 dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document will be subsequently amended in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) part 71 by removing Colored Federal airway B–1 and adding the identical Colored Federal airway B–12, effectively renaming it. This action does not affect any air traffic services. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act, and its agency implementing regulations in FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" regarding categorical exclusions for procedural actions at paragraph 5–6.5k, which categorically excludes from full environmental impact review actions that include, "Publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks." Since this procedural action consists only of a name change from Blue Federal airway B–1 in Alaska to B–12 to de-conflict with an identically named airway in Taiwan, this name change action is not expected to cause any potentially significant environmental impacts. In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A Airspace Designations and Reporting Points, dated August 3, 2016 and effective September 15, 2016, is amended as follows:

Paragraph 6009(d)—Blue Federal airways.

* * * * *

B–1 [Removed]

B–12 [New]

From Woody Island, AK, NDB to Iliamna, AK, NDB.

Issued in Washington, DC, on September 19, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–23116 Filed 9–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–423]

Schedules of Controlled Substances: Placement of Three Synthetic Phenethylamines Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration places three synthetic phenethylamines: 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5), 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36), including their optical, positional, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule I of the Controlled Substances Act. This scheduling action is pursuant to the Controlled Substances Act which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking. This action continues the application of the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe.

DATES: Effective: October 27, 2016.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purposes of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II.

The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring an adequate supply is available for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, "add to such a schedule or transfer between such schedules any drug or other substance if he * * * finds that such drug or other substance has a potential for abuse, and * * * makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *." The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA, 28 CFR 0.100, who in turn has redelegated that authority to the Deputy Administrator of the DEA. 28 CFR part 0, appendix to subpart R.

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the

Attorney General (1) on her own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS),[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action was initiated on the Attorney General's own motion, as delegated to the Drug Enforcement Administration, and is supported by, *inter alia,* a recommendation from the Assistant Secretary for Health of the HHS [2] and an evaluation of all relevant data by the DEA. This action continues the application of the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles, or proposes to handle, 25I–NBOMe, 25C–NBOMe, or 25B–NBOMe.

Background

On October 10, 2013, the DEA published a notice of intent to temporarily place 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5), 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36) into schedule I pursuant to the temporary scheduling provisions of the CSA. 78 FR 61991. On November 15, 2013, the DEA published a final order amending 21 CFR 1308.11(h) to temporarily place these three synthetic phenethylamines into schedule I of the CSA. 78 FR 68716. That final order was effective on the date of publication, and was based on findings by the Deputy Administrator of the DEA that the temporary scheduling of these three synthetic phenethylamine substances was necessary to avoid an imminent hazard to public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA requires that the temporary scheduling of a substance expire two years from the effective date of the scheduling order, or on or before November 14, 2015. 21 U.S.C. 811(h)(2). However, the CSA also provides that the temporary scheduling may be extended for up to one year during the pendency of proceedings under 21 U.S.C. 811(a)(1). *Id.* Accordingly, on November 13, 2015, the DEA published a notice of proposed rulemaking (NPRM) to permanently control 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe in schedule I of the CSA. 80 FR 70649. Specifically, the DEA proposed to add these substances to 21 CFR 1308.11(d), hallucinogenic substances. Also, on November 13, 2015, the DEA extended the temporary scheduling of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe by one year, until November 13, 2016. 80 FR 70658.

DEA and HHS Eight Factor Analyses

On August 12, 2015, the HHS provided the DEA with three scientific and medical evaluation documents prepared by the FDA entitled "Basis for the Recommendation to Place 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25I-NBOMe) and its Salts in Schedule I of the Controlled Substances Act (CSA);" "Basis for the Recommendation to Place 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25C-NBOMe) and its Salts in Schedule I of the Controlled Substances Act (CSA);" and "Basis for the Recommendation to Place 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25B-NBOMe) and its Salts in Schedule I of the Controlled Substances Act (CSA)." After considering the eight factors in 21 U.S.C. 811(c), including consideration of each substance's abuse potential, legitimate medical use, and dependence liability, the Assistant Secretary of the HHS recommended that 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe be controlled in schedule I of the CSA. In response, the DEA conducted its own eightfactor analysis of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe. Both the DEA and HHS analyses are available in their entirety under the tab "Supporting Documents" of the public docket of this action at *http://www.regulations.gov* under FDMS Docket ID: DEA–2015–0019 (Docket Number DEA–423).

Determination to Schedule 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe

After a review of the available data, including the scientific and medical evaluations and the scheduling recommendations from the HHS, the DEA published an NPRM entitled "Schedules of Controlled Substances: Placement of Three Synthetic Phenethylamines into Schedule I," proposing to control 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe in schedule I of the CSA. 80 FR 70649, November 13, 2015. The proposed rule provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before December 14, 2015. No requests for such a hearing were received by the DEA. The NPRM also provided an opportunity for interested persons to submit written comments on the proposal on or before December 14, 2015.

Comments Received

The DEA received no comments on the proposed rule to schedule 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe.

Scheduling Conclusion

After consideration of the scientific and medical evaluations and accompanying recommendations of the HHS, and the DEA's consideration of its own eight-factor analyses, the DEA finds that these facts and all other relevant data constitute substantial evidence of potential for abuse of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe. As such, the DEA is permanently scheduling 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe as controlled substances under the CSA.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

(1) 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe have a high potential for abuse that is comparable to other schedule I substances such as 2C-I, 2C-C, 2C-B, LSD and DOM;

(2) 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe have no currently accepted medical use in treatment in the United States; and

(3) There is a lack of accepted safety for use of 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe under medical supervision.

Based on these findings, the Administrator of the DEA concludes that 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5), 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36), including their optical, positional, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrant control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

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[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the Department of Health and Human Services (HHS) in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Requirements for Handling 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe

25I-NBOMe, 25C-NBOMe, or 25B-NBOMe are currently scheduled on a temporary basis in schedule I[2] and are therefore currently subject to the CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, conduct of instructional activities or chemical analysis, and possession of schedule I controlled substances, including those listed below. These controls will continue on a permanent basis:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe, or who desires to handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of Stocks.* 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. *Security.* 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe continue to be subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b), and in accordance with 21 CFR 1301.71–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe must be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant required to keep records and who possesses any quantity of 25I-NBOMe, 25C-NBOMe, and/or 25B-NBOMe is required to maintain an inventory of all stocks of NBOMes on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to 25I-NBOMe, 25C-NBOMe, and/or 25B-NBOMe pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304 and 1317. Manufacturers and distributors must submit reports regarding 25I-NBOMe, 25C-NBOMe, and/or 25B-NBOMe to the Automation of Reports and Consolidated Order System (ARCOS) pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.33.

8. *Order Forms.* Every DEA registrant who distributes 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe must continue to comply with the order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe not authorized by, or in violation of, the CSA or its implementing regulations continues to be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done "on the record after opportunity for a hearing," which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this rule and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. On November 15, 2013, the DEA published a final order to temporarily place these three synthetic phenethylamines into schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 78 FR 68716. On November 13, 2015, the DEA published a final order extending the temporary placement of these substances in schedule I of the CSA for up to one year pursuant to 21 U.S.C. 811(h)(2). 80 FR 70658. The DEA estimates that all entities handling or planning to handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe are currently registered to handle these substances. There are currently 18 registrations authorized to handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. These 18 registrations represent 13 entities, of which 6 are small entities Therefore, the DEA estimates six small entities are affected by this rule.

A review of the 18 registrations indicates that all entities that currently handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe handle other schedule I controlled substances, and have established and implemented (or currently maintain) the systems and processes required to handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe.

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[2] 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe are currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 80 FR 70658, Nov. 13, 2015.

Therefore, the DEA anticipates that this rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any of the six affected small entities. Therefore, the DEA has concluded that this rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the "Regulatory Flexibility Act" section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, that this action would not result in any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.11 by:

■ a. Adding paragraphs (d)(55) through (57); and

■ b. Removing paragraphs (h)(1) through (3) and redesignating paragraphs (h)(4) through (20) as (h)(1) through (17), respectively.

The additions read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(55) 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25I-NBOMe, 2C-I-NBOMe) (7538)

(56) 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25C-NBOMe, 2C-C-NBOMe) (7537)

(57) 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25B-NBOMe, 2C-B-NBOMe) (7536)

* * * * *

Dated: September 15, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–23185 Filed 9–26–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice: 9715]

RIN 1400–AD97

Passports; Correction

AGENCY: Department of State.

ACTION: Final rule; correction; correcting amendments.

SUMMARY: The Department of State published a final rule in the **Federal Register** on September 2, 2016 (81 FR 60608), amending the passport rules for the Department of State (the Department). The document requires certain corrections: A correction to a statutory citation; and adds a paragraph to the **SUPPLEMENTARY INFORMATION** relating to implementation of the rule.

DATES: This rule is effective on September 27, 2016.

FOR FURTHER INFORMATION CONTACT: Stephanie Traub, Office of Legal Affairs, Passport Services, (202) 485–6500. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department of State published a final rule on September 2, 2016 (81 FR 60608). This document corrects the final rule by changing "42 U.S.C. 16935a" to "22 U.S.C. 212b(c)(1)", wherever it occurs; and by adding a paragraph to the **SUPPLEMENTARY INFORMATION**, regarding implementation of the rule.

Correction

In the FR Doc 2016–21087, appearing on page 60608, in the **Federal Register** of September 2, 2016 (81 FR 60608) the following corrections are made:

1. Remove "42 U.S.C. 16935a" and add in its place "22 U.S.C. 212b(c)(1)" in the following places:

a. On page 60608, in the second column, first paragraph, of the **SUPPLEMENTARY INFORMATION**; and

b. On page 60608, in the third column, first full paragraph.

2. Add the following paragraph on page 60608, third column, after the first full paragraph and prior to "Regulatory Findings":

Pursuant to 22 U.S.C. 212b(f), § 51.60(a)(4) and (g) shall not be applied until the Secretary of State, the Secretary of Homeland Security, and the Attorney General certify to Congress that the process they developed and reported to Congress has been successfully implemented. Updates regarding the implementation of these sections as well as § 51.60(a)(3) will be posted on *http://travel.state.gov.*

List of Subjects in 22 CFR Part 51

Passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 51 is corrected by making the following correcting amendments:

PART 51—PASSPORTS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 8 U.S.C. 1504; 18 U.S.C. 1621; 22 U.S.C. 211a, 212, 212b, 213, 213n (Pub. L. 106–113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A–430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, & 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103–317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, 3 CFR, 1966–1970 Comp., p. 570; Pub. L. 114–119, 130 Stat. 15; Sec. 1 of Pub. L. 109–210, 120 Stat. 319; Sec. 2 of Pub. L. 109–167, 119 Stat.

3578; Sec. 5 of Pub. L. 109–472, 120 Stat. 3554; Pub. L. 108–447, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; Pub. L. 108–458, 118 Stat. 3638, 3823 (Dec. 17, 2004).

§ 51.60 [Amended]

■ 2. Amend § 51.60 in paragraphs (a)(4) and (g) by removing "42 U.S.C. 16935a" and adding in its place "22 U.S.C. 212b(c)(1)".

Dated: September 20, 2016.

Michele Thoren Bond,

Assistant Secretary Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–23283 Filed 9–26–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 103

[DOD–2008–OS–0124; 0790–AJ40]

Sexual Assault Prevention and Response (SAPR) Program

AGENCY: Department of Defense.

ACTION: Interim final rule; amendment.

SUMMARY: This rule amends as a final rule published on April 5, 2013 to implement Department of Defense's SAPR Program. The Department seeks to establish a culture free of sexual assault through prevention, education and training, response capability, victim support, reporting procedures, and accountability to enhance the safety and well-being of all persons covered by this regulation.

DATES: This rule is effective September 27, 2016. Comments must be received by November 28, 2016.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Diana Rangoussis, Senior Policy Advisor, Sexual Assault Prevention and Response Office (SAPRO), 571–372–2648.

SUPPLEMENTARY INFORMATION:

Retrospective Review

This rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563 completed in August 2011. DoD's full plan can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036.*

Justification for an Interim Final Rule

The Department of Defense is publishing this rule as interim to maintain and enhance the current SAPR program which elucidates the prevention, response, and oversight of sexual assaults involving members of the U.S. Armed Forces and Reserve Component, to include the National Guard.

Until this interim final rule is published:

—Sexual assault victims do not have the ability to receive individualized legal assistance from a Special Victims Counsel (SVC) and Victims' Legal Counsel (VLC) to help navigate the complex military justice system. Additionally, the SVC/VLC can advise the victim of the ramifications associated with the option (Unrestricted or Restricted) selected.

—Military members who are sexually assaulted cannot receive the ability to request an Expedited Transfer as a means to enhance their safety or well-being.

—Preemption of state and local laws requiring disclosure of personally identifiable information of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official, cannot be implemented.

Summary of the Major Amendments to the Final Rule

This rule amends a final rule published in the **Federal Register** on April 5, 2013 (78 FR 20443–20451) by incorporating congressional mandates from Section 113 of Title 10, United States Code (U.S.C.), Public Laws 112–81, 113–66, and 114–92. Additionally, these amendments include statutory provisions and policy recommendations from the Secretary of Defense specifiying:

- CMG Chair inquiries into incidents of retaliation involving the victim, witnesses, bystanders (who intervened), SARC, SAPR VA, or responders;
- Specialized training for all supervisors (officer, enlisted, civilian) that explain requirement to protect victim from retaliation, reprisal, ostracism, and maltreatment;
- What constitutes retaliation, reprisal, ostracism, and maltreatment;
- List of resources available for victims to report instances of retaliation, reprisal, ostracism, or maltreatment.
- Further policy mandates as stated in the Response System Panel's (RSP) recommendation #61 and subsection 1716 of National Defense Authorization Act Fiscal Year 2014 include the establishment of the requirement that service member victims of sexual assault be informed of the availability of legal assistance and the right to consult with a Special Victim's Counsel (SVC) and Victims' Legal Counsel (VLC). The RSP was a Congressionally mandated independent review body established to review the progress of sexual assault initiatives within the Department of Defense.

Additional changes from the April 2013 rule include:

- Requirement to prescribe training and certification protocol for sexual assault medical forensic examiners in accordance with section 1725 of NDAA FY14.
- Requirement to notify sexual assault victims to answer "no" to Question 21 on Standard Form 86, if consultation with health care professional meets outlined criteria per section 1747 of NDAA FY14.
- Establishment of a confidential process by which a sexual assault victim may challenge the terms or the characterization of their discharge on the grounds that the terms or characterization were adversely affected by being a sexual assault victim per section 547 of NDAA FY15.
- Requiring the installation SARC and the installation Family Advocacy Program (FAP) staff to coordinate when a sexual assault occurs as a result of domestic abuse or domestic violence or involves child abuse.
- Providing SAPR policy guidance and procedures for the National Guard through direction of the Chief, National Guard Board (NGB).
- Establishing the Expedited Transfer (E.T.) program for service member victims of sexual assault.

Background

The SAPR program authorities are based on the following:

- 10 U.S.C. 136 and DoD Directive 5124.02 (available at *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf*), where the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) may:

—Establish and allocate civilian personnel authorizations of the DoD Components and review and approve military and civilian personnel authorization changes during program execution.

—Exercise the authorities of the Secretary of Defense, whenever vested, relating to civilian personnel, whether established by law, regulation, or other actions.

- 10 U.S.C. 113 which states:

—The Secretary of Defense is head of the Department of Defense appointed by the President.

—The Secretary of Defense shall report annually in writing to the President and the Congress on the expenditures, work, and accomplishments of the Department of Defense.

- Public Law 112–81, National Defense Authorization Act for Fiscal Year 2012 which:

—Reforms offenses relating to rape, sexual assault, and other sexual misconduct under the Uniform Code of Military Justice.

—Compels production of documentary evidence.

- Public Law 113–66, National Defense Authorization Act for Fiscal Year 2014 which requires:

—Temporary administrative reassignment or removal of alleged offender.

—Retention of forms in connection with Restricted Reports for 50 years.

—Elevating oversight to senior leadership through an eight-day incident report in response to an Unrestricted Report in which the victim is a member of the Armed Forces.

—Discharge or dismissal for certain sex-related offenses and trial of such offenses by general courts-martial.

- Public Law 114–92, National Defense Authorization Act for Fiscal Year 2016 which:

—In cases involving restricted reporting, preempts any State law or regulation requiring disclosure of PII of an adult military victim (or adult military dependent victim) or alleged perpetrator of a sexual assault to a state or local law enforcement agency except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health or safety of an individual.

Discussion of Costs and Benefits

The Fiscal Year 2015 Operation and Maintenance funding for DoD SAPRO was $24.3 million. There is an additional Congressional allocation of $25.0 million designated for the Special Victims' Counsel program and the Special Victims' Investigation and Prosecution capability reprogrammed to the Military Services and the National Guard Bureau. Additionally, each of the Military Services establishes its own SAPR budget for the programmatic costs arising from the implementation of the training, prevention, reporting, response, and oversight requirements established by this rule.

The benefits of these amendments are the following:

- Preempts state and local laws requiring disclosure of personally identifiable information of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official.
- Protects victims of sexual assault from coercion, retaliation, and reprisal in accordance with DoD Directive 7050.06, "Military Whistleblower Protection" (available at *http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf*).
- Requires notification to victims of their right to speak to an SVC before providing a statement to a Military Criminal Investigative Office (MCIO) or trial counsel interview.
- Insures victims are aware of their rights related to speaking with defense counsel by requiring counsel to request the interview through the SVC, or other counsel for the victim as the victim choses.
- Expands access to SVC to DoD Civilians thus affording them the same legal counseling given to service members.
- Eliminates the five-year statute of limitations on trial by court-martial for additional offenses involving sex-related crimes.
- Requires all forms related to the reporting and forensic examination to be retained for 50 years to insure victims access to historical documentation.
- Includes consultation and assisting victims with complaints against the government, FOIA requests, and correspondence or communications with Congress as discussed in DoD Directive 7050.06
- Requires evidence to be retained for 5 years, or until the completion of related proceedings to allow victims the opportunity to proceed forward in the investigative process at their own pace.
- Elevates oversight to senior leadership by an 8-day incident reporting requirement in response to Unrestricted Report of sexual assault when victim is a military member.
- Tracks a commanding officer's compliance in conducting organizational climate assessments for purposes of preventing and responding to sexual assaults with all assessments to be completed within 120 days of taking command and annually thereafter.
- Requires review of information on sex-related offenses in personnel service records of members of the Armed Forces (for members who were not "convicted" but received disciplinary action for sexual assault-related act). This will assist in insuring the proper assignment of individuals in those "positions of special trust and responsibilities" within the military.
- Authorizes members of the Reserve Component to be represented by a Special Victims' Counsel, even when the member is not authorized to receive legal assistance, if the member is the victim of an alleged sex-related offense with a nexus to the member's military service.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that this rule is not an economically significant regulatory action.

The rule does not:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities.
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

However, it has been determined that 32 CFR part 103 does raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule provides SAPR Program guidance only.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. OMB has approved these requirements under OMB Control Number 0704–0482 "Defense Sexual Assault Incident Database. The System of Records Notice for DHRA 06, Defense Sexual Assault Incident Database is available at *http://www.gpo.gov/fdsys/pkg/FR-2015-11-04/pdf/2015-28081.pdf*. The Privacy Impact Assessment (PIA) is available at *http://www.dhra.mil/webfiles/docs/Privacy/PIA/DHRA.06.SAPRO.DSAID.7.15.2015.pdf;* or *http://www.dhra.mil/website/headquarters/info/pia.shtml*.

Executive Order 13132, "Federalism"

It has been certified that this rule does have federalism implications, as set forth in Executive Order 13132. This rule does have substantial direct effects on:

1. The States;
2. The relationship between the National Government and the States; or
3. The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 103

Crime, Health, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 103 is amended to read as follows:

PART 103—[AMENDED]

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 10 U.S.C. 113; secs. 541 and 542, Pub. L. 112–81, 125 Stat. 1298; secs. 1705, 1713, 1723, and 1743, Pub. L. 113–66, 127 Stat. 672; and sec. 536, Pub. L. 114–92, 129 Stat. 817.

■ 2. Amend § 103.1 by:

■ a. Removing paragraph (a)(6) and redesignating paragraphs (a)(7) through (16) as (a)(6) through (15).

■ b. Revising newly redesignated paragraph (a)(14).

■ c. Removing paragraph (a)(17) and redesignating paragraph (a)(18) as (a)(16).

■ e. Redesignating paragraph (a)(19) as (a)(17) and removing "and" from the end of newly redesignated paragraph (a)(17).

■ d. Removing paragraph (a)(20).

■ e. Adding paragraphs (a)(18) through (23).

The revisions and additions read as follows:

§ 103.1 Purpose.

(a) * * *

(14) "Department of Defense 2014–2016 Sexual Assault Prevention Strategy," April 30, 2014.

* * * * *

(18) Public Law 113–66, "The National Defense Authorization Act for Fiscal Year 2014," December 2013;

(19) Public Law 110–417, "The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009," October 14, 2008;

(20) DoD Instruction 5545.02, "DoD Policy for Congressional Authorization and Appropriations Reporting Requirement," December 19, 2008;

(21) Title 32, United States Code;

(22) Public Law 112–81, "National Defense Authorization Act for Fiscal Year 2012," December 31, 2011; and

(23) Public Law 114–92, "National Defense Authorization Act for Fiscal Year 2016", November 25, 2015.

■ 3. Amend § 103.2 by:

■ a. In paragraph (b), removing "medical" and adding in its place "healthcare."

■ b. Revising paragraph (c).

■ c. In paragraph (d) introductory text, removing the first occurrence of "medical" and adding in its place "healthcare (medical and mental)," and removing the two other occurrences in the third and fourth sentences of "medical" and adding in their place "healthcare."

■ d. Redesignating paragraph (f) as (g), and adding new paragraph (f).

The revision and addition read as follows:

§ 103.2 Applicability.

* * * * *

(c) Military dependents 18 years of age and older who are eligible for treatment in the military healthcare system, at installations in the continental United States and outside of the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner.

* * * * *

(f) Does not apply to victims of sexual assault perpetrated by a spouse or intimate partner, or military dependents under the age of 18 who are sexually assaulted. The Family Advocacy Program (FAP), as described in DoDI 6400.06, provides the full range of services to victims of domestic abuse or domestic violence, and to military dependents under the age of 18 who are sexually assaulted.

* * * * *

■ 4. Amend § 103.3 by:

■ a. Revising the definition of "Consent."

■ b. Adding the definitions of "Family Advocacy Program (FAP)," "Healthcare," and "Healthcare provider" in alphabetical order.

■ c. In the definition of "Official investigative process," removing "commander or."

■ d. Revising the definition of "Restricted reporting."

■ e. Adding the definition of "Special Victims' Counsel (SVC)" in alphabetical order.

■ f. In the definition of "Victim," removing "Program" and adding in its place "Option" in the second sentence.

■ g. Adding the definition of "Victims' Legal Counsel (VLC)" in alphabetical order.

The revisions and additions read as follows:

§ 103.3 Definitions.

* * * * *

Consent. A freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent. A sleeping, unconscious, or incompetent person cannot consent.

* * * * *

Family Advocacy Program (FAP). A DoD program designated to address child abuse and domestic abuse in military families in cooperation with civilian social service agencies and military and civilian law enforcement agencies. Prevention, advocacy, and intervention services are provided to individuals who are eligible for treatment in military medical treatment facilities.

* * * * *

Healthcare. Medical (physical) and mental health care.

* * * * *

Healthcare provider. Those individuals who are employed or assigned as healthcare professionals, or are credentialed to provide healthcare services at a medical treatment facility (MTF), or who provide such care at a deployed location or otherwise in an official capacity. This also includes military personnel, DoD civilian employees, and DoD contractors who provide healthcare at an occupational health clinic for DoD civilian employees or DoD contractor personnel. Healthcare providers may include, but are not limited to:

(1) Licensed physicians practicing in the military healthcare system (MHS) with clinical privileges in obstetrics and gynecology, emergency medicine, family practice, internal medicine, pediatrics, urology, general medical officer, undersea medical officer, flight surgeon, psychiatrists, or those having clinical privileges to perform pelvic examinations or treat mental health conditions.

(2) Licensed advanced practice registered nurses practicing in the MHS with clinical privileges in adult health, family health, midwifery, women's health, mental health, or those having clinical privileges to perform pelvic examinations.

(3) Licensed physician assistants practicing in the MHS with clinical privileges in adult, family, women's health, or those having clinical privileges to perform pelvic examinations.

(4) Licensed registered nurses practicing in the MHS who meet the requirements for performing a SAFE as determined by the local privileging authority. This additional capability shall be noted as a competency, not as a credential or privilege.

(5) A psychologist, social worker or psychotherapist licensed and privileged to provide mental health care or other counseling services in a DoD or DoD-sponsored facility.

* * * * *

Restricted reporting. Reporting option that allows sexual assault victims to confidentially disclose the assault to specified individuals (*i.e.,* SARC, SAPR VA, or healthcare personnel), in accordance with 32 CFR 105.3 and 105.8, and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without triggering an official investigation. The victim's report provided to healthcare personnel (including the information acquired from a SAFE Kit), SARC's, or SAPR VAs at DoD installations will not be reported to law enforcement or to the command to initiate the official investigative process unless the victim consents to such reporting or an established exception applies in accordance with DoDI 6495.02 or as provided for in 32 CFR part 105. The Restricted Reporting Program applies to Service Members and their adult military dependent 18 years of age and older.

* * * * *

Special Victims' Counsel (SVC). Attorneys who are assigned to provide legal assistance in accordance with section 1716 of Public Law 113–66 and Service regulations. The Air Force, Army, National Guard, and Coast Guard refer to these attorneys as SVC. The Navy and Marine Corps refer to these attorneys as VLC.

* * * * *

Victims' Legal Counsel (VLC). Attorneys who are assigned to provide legal assistance in accordance with section 1716 of Public Law 113–66 and Service regulations. The Air Force, Army, National Guard, and Coast Guard refer to these attorneys as SVC. The Navy and Marine Corps refer to these attorneys as VLC.

■ 5. Amend § 103.4 by:

■ a. In paragraph (i), removing "comprehensive medical treatment" and adding in its place "comprehensive healthcare (medical and mental health) treatment."

■ b. In paragraph (j), removing "medical" and adding in its place "health" in the first sentence.

■ c. In paragraph (k) introductory text, removing "Complete," at the beginning of the second sentence.

■ d. In paragraph (k)(1):

■ i. Removing "medical treatment" and adding in its place "healthcare" in the first sentence.

■ ii. Removing "medical" and adding in its place "health" in the second sentence.

■ e. In paragraph (k)(2) introductory text:

■ i. Removing "medical" and adding in its place "healthcare" in the first sentence.

■ ii. Adding ", state laws, or federal regulations" at the end of second sentence.

■ iii. Removing "medical care" and adding in its place "healthcare" in the last sentence.

■ f. In paragraph (k)(2)(i), removing "Program" and adding in its place "option" in the first sentence.

■ g. In paragraph (k)(2)(ii), removing "complete" in the fourth sentence.

■ h. In paragraph (k)(2)(v), revising the third sentence.

■ i. Adding paragraph (n).

The revisions and additions read as follows:

§ 103.4 Policy.

* * * * *

(k) * * *

(2) * * *

(v) * * * Improper disclosure of confidential communications protected under Restricted Reporting, improper release of healthcare information, and other violations of this policy or other laws and regulations are prohibited and may result in discipline pursuant to the UCMJ, or other adverse personnel or administrative actions.

* * * * *

(n) Victims must be informed of the availability of legal assistance and the right to consult with a Special Victims' Counsel (SVC)/Victims' Legal Counsel (VLC) in accordance with section 1716 of the National Defense Authorization Act for Fiscal Year 2014 (Pub. L. 113–66).

■ 6. Amend § 103.5 by:

■ a. In paragraph (a)(1), adding ", and the Staff Judge Advocate to the Commandant of the Marine Corps" after "Military Departments."

■ b. Revising paragraph (a)(6) introductory text.

■ c. In paragraph (a)(6)(i), adding ", and the Staff Judge Advocate to the Commandant of the Marine Corps" after "Military Departments."

■ d. In paragraph (a)(6)(iii), adding ", and the Staff Judge Advocate to the Commandant of the Marine Corps" after "Military Departments."

■ e. Adding paragraph (a)(6)(vi).

■ f. Revising paragraph (f)(5).

■ g. In paragraph (f)(6), removing "medical treatment" and adding in its place "healthcare."

■ h. Revising paragraph (f)(12).

■ i. In paragraph (f)(16), adding "the requirements in" after "accordance with."

■ j. Redesignating paragraphs (f)(17) through (19) as (f)(18) through (20), and adding a new paragraph (f)(17).

■ k. Redesignating paragraphs (g), (h), and (i) as (h), (i), and (j), and adding a new paragraph (g).

■ l. In newly redesignated paragraph (i)(2), removing "medical" and adding in its place "healthcare."

■ m. In newly redesignated paragraph (i)(5), removing "medical treatment" and adding in its place "that healthcare."

■ n. Adding paragraph (i)(12).

The revisions and additions read as follows:

§ 103.5 Responsibilities.

(a) * * *

(6) Oversee the DoD Sexual Assault Prevention and Response Office (SAPRO). Serving as the DoD single point of authority, accountability, and oversight for the SAPR program, SAPRO provides recommendations to the USD(P&R) on the issue of DoD sexual assault policy matters on prevention, response, and oversight. The SAPRO Director will be appointed from among general or flag officers of the Military Services or DoD employees in a comparable Senior Executive Service position in accordance with Public Law 112–81 . The SAPRO Director is responsible for:

* * * * *

(vi) Overseeing development of strategic program guidance and joint planning objectives for resources in support of the SAPR Program, and making recommendations on modifications to policy, law, and regulations needed to ensure the continuing availability of such resources (Pub. L. 113–66).

* * * * *

(f) * * *

(5) Align Service prevention strategies with the DoD Sexual Assault Prevention Strategy.

* * * * *

(12) Submit required data to DSAID. Require confirmation that a multi-disciplinary case management group (CMG) tracks each open Unrestricted Report, is chaired by the installation commander (or the deputy installation commander), and that CMG meetings are held monthly for reviewing all Unrestricted Reports of sexual assaults in accordance with DoD Instruction 6495.02.

* * * * *

(17) Require the installation SARC and the installation FAP staff to coordinate together when a sexual assault occurs as a result of domestic abuse or domestic violence or involves child abuse to ensure the victim is directed to FAP.

* * * * *

(g) On behalf and with the approval of the Secretaries of the Army and Air Force, and in coordination with DoD SAPRO and the State Adjutants General, the Chief, NGB establishes and implements SAPR policy and procedures for National Guard members on duty pursuant to Title 32, U.S.C.

* * * * *

(i) * * *

(12) Establish guidance for when an Expedited Transfer has been requested in accordance with DoD Instruction 6495.02.

* * * * *

Dated: September 7, 2016.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–21875 Filed 9–26–16; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2016–0509; FRL–9952–97–OAR]

Extension of Deadline for Action on the August 2016 Section 126 Petition From Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is determining that 60 days is insufficient time to complete the technical and other analyses and public notice-and-comment process required for our review of a petition submitted by the state of Delaware pursuant to section 126 of the Clean Air Act (CAA). The petition requests that the EPA make a finding that Harrison Power Station, located near Haywood, Harrison County, West Virginia, emits air pollution that significantly contributes to nonattainment and interferes with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in the state of Delaware. Under section 307(d)(10) of CAA, the EPA is authorized to grant a time extension for responding to a petition if the EPA determines that the extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the section 307(d) notice-and-comment rulemaking requirements. By this action, the EPA is making that determination. The EPA is therefore extending the deadline for acting on the petition to no later than April 7, 2017.

DATES: This final rule is effective on September 27, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0509. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Gobeail McKinley, Office of Air Quality Planning and Standards (C504–04), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541–5246, email: *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION

I. Background and Legal Requirements for Interstate Air Pollution

This is a procedural action to extend the deadline for the EPA to respond to a petition from the state of Delaware filed pursuant to CAA section 126(b). The EPA received the petition on August 8, 2016. The petition requests that the EPA make a finding under section 126(b) of the CAA that the Harrison Power Station, located near Haywood, Harrison County, West Virginia, is operating in a manner that emits air pollutants in violation of the provisions of section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2008 and 2015 ozone NAAQS.

Section 126(b) of the CAA authorizes states to petition the EPA to find that a major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i)[1] by contributing significantly to nonattainment or maintenance problems in downwind states. Section 110(a)(2)(D)(i)(I) of the CAA prohibits emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. The petition asserts that emissions from Harrison Power Station's three electric generating units emit air pollutants in violation of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 8-hour ozone NAAQS, set at 0.075 parts per million

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[1] The text of CAA section 126 codified in the United States Code cross references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to CAA section 110(a)(2)(D)(i). *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

(ppm), and the revised 2015 8-hour ozone NAAQS, set at 0.070 ppm.[2]

Pursuant to CAA section 126(b), the EPA must make the finding requested in the petition, or must deny the petition within 60 days of its receipt. Under CAA section 126(c), any existing sources for which the EPA makes the requested finding must cease operations within 3 months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules (containing increments of progress) that the EPA may provide to bring about compliance with the applicable requirements as expeditiously as practical but no later than 3 years from the date of the finding.

CAA section 126(b) further provides that the EPA must hold a public hearing on the petition. The EPA's action under section 126 is also subject to the procedural requirements of CAA section 307(d). *See* CAA section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3)–(6).

In addition, CAA section 307(d)(10) provides for a time extension, under certain circumstances, for a rulemaking subject to CAA section 307(d). Specifically, CAA section 307(d)(10) provides:

> Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the subsection.

CAA section 307(d)(10) may be applied to section 126 rulemakings because the 60-day time limit under CAA section 126(b) necessarily limits the period for promulgation of a final rule after proposal to less than 6 months.

II. Final Rule

A. Rule

In accordance with CAA section 307(d)(10), the EPA is determining that the 60-day period afforded by CAA section 126(b) for responding to the petition from the state of Delaware is not adequate to allow the public and the agency the opportunity to carry out the purposes of CAA section 307(d). Specifically, the 60-day period is insufficient for the EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing, on a proposed finding regarding whether the Harrison Power Plant identified in the CAA section 126 petition contributes significantly to nonattainment or interferes with maintenance of the 2008 ozone NAAQS or the 2015 ozone NAAQS in Delaware. Moreover, the 60-day period is insufficient for the EPA to review and develop response to any public comments on a proposed finding, or testimony supplied at a public hearing, and to develop and promulgate a final finding in response to the petition. The EPA is in the process of determining an appropriate schedule for action on the CAA section 126 petition. This schedule must afford the EPA adequate time to prepare a proposal that clearly elucidates the issues to facilitate public comment, and must provide adequate time for the public to comment and for the EPA to review and develop responses to those comments prior to issuing the final rule. As a result of this extension, the deadline for the EPA to act on the petition is April 7, 2017.

B. Notice and Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). The EPA believes that, because of the limited time provided to make a determination, the deadline for action on the CAA section 126 petition should be extended. Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination otherwise would require notice and opportunity for public comment, there is good cause within the meaning of 5 U.S.C. 553(b)(3)(B) not to apply those requirements here. Providing for notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the substantive review of the CAA section 126 petition.

C. Effective Date Under the APA

This action is effective on September 27, 2016. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. This action—a deadline extension—must take effect immediately because its purpose is to extend by 6 months the deadline for action on the petition. As discussed earlier, the EPA intends to use the 6-month extension period to develop a proposal on the petition and provide time for public comment before issuing the final rule. It would not be possible for the EPA to complete the required notice and comment and public hearing process within the original 60-day period noted in the statute. These reasons support an immediate effective date.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory

This action is exempt from review by the Office of Management and Budget because it simply extends the date for the EPA to take action on a petition.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This good cause final action simply extends the date for the EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. It does not contain any recordkeeping or reporting requirements.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements because the agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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[2] On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS, based on extensive scientific evidence about ozone's effects on public health and welfare. *See* 80 FR 65291 (October 26, 2015).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This good cause final action simply extends the date for the EPA to take action on a petition. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This good cause final action simply extends the date for the EPA to take action on a petition and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section II.B of this document, including the basis for that finding.

IV. Statutory Authority

The statutory authority for this action is provided by sections 110, 126 and 307 of the CAA as amended (42 U.S.C. 7410, 7426 and 7607).

V. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the appropriate circuit by November 28, 2016. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone.

Dated: September 19, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–23155 Filed 9–26–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 8

RIN 0930–AA22

Medication Assisted Treatment for Opioid Use Disorders Reporting Requirements

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Final rule.

SUMMARY: This final rule outlines annual reporting requirements for practitioners who are authorized to treat up to 275 patients with covered medications in an office-based setting. This final rule will require practitioners to provide information on their annual caseload of patients by month, the number of patients provided behavioral health services and referred to behavioral health services, and the features of the practitioner's diversion control plan. These reporting requirements will help the Department of Health and Human Services (HHS) ensure compliance with the requirements of the final rule, "Medication Assisted Treatment for Opioid Use Disorders," published in the **Federal Register** on July 8, 2016.

DATES: *Effective Date:* This final rule is effective on October 27, 2016.

FOR FURTHER INFORMATION CONTACT: Jinhee Lee, Pharm.D., Public Health Advisor, Center for Substance Abuse Treatment, 240–276–2700

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through Federal Digital System (FDsys), a service of the U.S. Government Printing Office. This database can be accessed via the Internet at *http://www.gpo.gov/fdsys.*

I. Background

On July 8, 2016, HHS issued a final rule entitled "Medication Assisted Treatment for Opioid Use Disorders" in the **Federal Register** (81 FR 44712). That final rule increases access to medication-assisted treatment (MAT) with covered medications,[1] in an office-based setting, by allowing eligible physicians to request approval to treat up to 275 patients if certain conditions are met. The final rule also includes requirements to help ensure that patients receive the full array of services that comprise evidence-based MAT and minimize the risk that the medications provided for treatment are misused or diverted. HHS issued a supplemental Notice of Proposed Rulemaking (SNPRM) along with the final rule, which included reporting requirements for practitioners who increase their patient limit to 275.

A. Regulatory History

On March 30, 2016, HHS issued a Notice of Proposed Rulemaking, "Medication Assisted Treatment for Opioid Use Disorders." On July 8, 2016, HHS issued a final rule which finalized the regulation with the exception of sections relating to the requirement to provide reports to SAMHSA (§ 8.630(b)) and the reporting requirements (§ 8.635). Also on July 8, 2016, HHS published a Supplemental Notice of Proposed Rulemaking (SNPRM) in the **Federal Register** which proposed reporting requirements for practitioners whose Request for Patient Limit Increase is approved under Section 8.625. The purpose of the reporting requirements is to help HHS assess practitioner compliance with the additional responsibilities of practitioners who are authorized to treat up to the highest patient limit, as outlined in the final rule, ''Medication Assisted Treatment for Opioid Use Disorders.'' Reporting is an integral component of HHS's approach to increase access to MAT while helping to ensure that patients receive the full array of services that comprise evidence-based MAT and minimize the risk that the medications provided for treatment are misused or diverted.

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[1] Covered medications means the drugs or combination of drugs that are covered under 21 U.S.C. 823(g)(2)(C).

The comment period for the SNPRM ended on August 8, 2016. HHS received 37 comments electronically and nine additional comments from a public listening session which was held on August 2, 2016. Additionally, HHS received 27 comments about the reporting requirements during the comment period for the Medication Assisted Treatment Notice for Proposed Rulemaking (NPRM) issued in March 2016. Comments primarily came from individuals who currently prescribe covered medications and national organizations representing practitioners and public health agencies. HHS also received several comments during conversations with the Department of Defense and the Department of Veterans Affairs and incorporated this feedback into this final rule.

B. Overview of Final Rule

This final rule adopts the same basic structure and framework as the supplemental proposed rule. Subpart F, Section 8.635 describes what the reporting requirements are for practitioners whose Request for Patient Limit Increase application is approved.

HHS has made some changes to the proposed reporting requirements based on the comments we received with respect to the SNPRM. HHS has also updated Section 8.630 by adding the requirement proposed in the NPRM that practitioners need to provide reports to SAMHSA as specified in Section 8.635 to maintain their approval to treat up to 275 patients.

HHS has responded to the comments received in response to the March 2016 NPRM and this SNPRM, and provided an explanation of each of the changes made to the proposed rule in the preamble.

II. Provisions of the Proposed Rule and Analysis and Reponses to Public Comments

A. General Comments

HHS received numerous comments providing support for the proposed reporting requirements. Commenters stated that the requirements would be particularly valuable in minimizing diversion and improving access to and quality of care. However, other commenters expressed concerns that the reporting requirements were too burdensome and would limit the number of practitioners who apply for the increased patient limit, particularly for individual practitioners or small group practices. Others expressed that the reporting requirements should be consistent for all practitioners prescribing buprenorphine for MAT. Some commenters also stated that there was no evidence that the reporting requirements would improve the quality of patient care or minimize misuse or diversion. Other commenters noted that other areas of medicine do not have reporting requirements.

HHS has modified the reporting requirements in response to the comments. Given the importance of ensuring practitioners comply with the Medication Assisted Treatment for Opioid Disorders requirements while minimizing their reporting burden, we believe that the updated reporting requirements as outlined in § 8.635 and further specified in report form instructions to be issued after finalization of this rule, strike the appropriate balance. Additional detail regarding these reporting requirements will be provided in the practitioner reporting form which will be available for public comment shortly after finalization of this rule.

HHS also received a variety of comments related to the issue of MAT that did not specifically relate to the SNPRM but generally fell into five main categories. The categories and comments are described below.

Need for Clarification

Comment: HHS received a comment requesting clarification on how the information collected will be used.

Response: The information collected through these reporting requirements will enable HHS to assess compliance with the requirements of 42 CFR part 8, subpart F.

Comment: HHS received a comment requesting clarification on how to calculate the numbers for each reporting requirement.

Response: Guidance on how to calculate the numbers for each reporting requirement will be issued by HHS.

Comment: HHS received a comment requesting clarification on whether the requirements apply to all practitioners approved for the higher limit, or only those who qualify with the qualified practice setting criteria.

Response: The reporting requirements apply to all practitioners who are approved for the higher patient limit of 275.

Comment: HHS received a comment requesting clarification about what, if any, supporting data and documentation will be required along with the annual report.

Response: Practitioners may be required to submit supporting data and documentation along with the annual report. Future guidance will be provided for more information.

Comment: HHS received a comment asking whether there are specific benchmarks practitioners are required to meet when they report percentages.

Response: HHS is not requiring practitioners to meet specific benchmarks.

Comment: HHS received a comment inquiring about the implications of 42 CFR part 2, and how information obtained through the reporting requirements will be used if patients do not provide consent to use their information.

Response: 42 CFR part 2 protects the identity of individuals as substance use disorder patients and prohibits the disclosure of any information that would identify an individual as a substance use disorder patient. The reporting requirements do not seek patient identifying information; therefore, the requirements are not in conflict with the restrictions of 42 CFR part 2.

Final Rule To Increase Patient Limit

HHS received several comments regarding the final rule, ''Medication Assisted Treatment for Opioid Use Disorders,'' published in the **Federal Register** on July 8, 2016. One commenter stated that the highest patient limit should be higher than 275. Another commenter recommended that there be no additional requirements associated with increasing the patient limit from 100 to 275. Other commenters expressed concerns that the final rule does not require practitioners to ensure patients receive the full array of services, prevent diversion, or follow nationally recognized evidence-based guidelines. An additional commenter recommended that SAMHSA audit practitioners to ensure that they are in compliance with the rule. A final commenter requested clarification regarding whether hospitalists who work in an acute inpatient hospital facility are eligible for the higher patient limit because they do not track patients after they are discharged.

Response: Comments related to the final rule, Medication Assisted Treatment for Opioid Use Disorders, that do not directly relate to the proposed reporting requirements which were the subject of the SNPRM, are outside the scope of this final rule and will not be addressed in this preamble.

Access to Buprenorphine

HHS received several comments pertaining to access to buprenorphine. One comment expressed concerns about the impact of workforce shortages on access, and another commenter stated that clinical pharmacists should be allowed to prescribe buprenorphine, which would increase access. An additional commenter recommended that HHS work with stakeholders to explore mechanisms to address systemic barriers.

Response: These comments do not relate to the reporting requirements under 42 CFR part 8, subpart F, and therefore, will not be addressed in this preamble.

Comprehensive Addiction and Recovery Act of 2016

Comments: HHS received a small number of comments about the Comprehensive Addiction and Recovery Act of 2016 (CARA). One commenter asked whether physician assistants and nurse practitioners are required to report quality and patient outcomes data. Another commenter requested additional information on training requirements.

Response: Comments related to CARA do not relate to the reporting requirements, and therefore, will not be addressed in this preamble.

Other Comments

Comments: HHS received a number of comments that did not relate to reporting requirements, including a comment about the impact of the Drug Enforcement Administration's (DEAs) narcotic prescribing guidelines on the rights of people living with chronic pain, a comment about the impact of negative perceptions on individuals who receive MAT, a comment about the importance of ensuring that Drug Addiction Treatment Act of 2000 (DATA 2000) patients receive behavioral support services, a comment that the proposed reporting requirements would also be beneficial for those practitioners who are not seeking the higher patient limit increase but treat individuals with opioid use disorders, a comment to combine the existing opioid treatment program reporting requirements with those stated in this final rule, and a comment about the importance of coordination across HHS.

Response: These comments do not relate to the reporting requirements, and therefore, will not be addressed in this preamble.

B. Subpart F

The average monthly caseload of patients receiving buprenorphine-based MAT, per year.

Comments: HHS received a comment recommending that the first proposed reporting requirement, "The average monthly caseload of patients receiving buprenorphine-based MAT, per year" be replaced with the following two questions: "(1) For the final 3 months of the reporting year, what was the average monthly caseload of patients receiving buprenorphine-based MAT? and (2) Are you currently accepting new opioid use disorder patients requiring MAT?"

An additional commenter recommended that HHS collect the following baseline data points: Total number of patients admitted that year, total number of patients carried over from the previous year, and total number of patients discharged.

Response: HHS recognized that asking practitioners to calculate and report averages could be burdensome and has, therefore, changed this reporting requirement. The revised text now asks practitioners to report annual caseloads of patients by month. By seeking information on the annual caseload of patients by month, HHS believes this updated reporting requirement, as further elaborated upon in the proposed report form instructions, will strike the appropriate balance between collecting valuable information needed to assess compliance with the rule and avoiding undue burden to practitioners.

Summary of Regulatory Changes

For the reasons set forth in the proposed rule and considering the comments received, HHS replaced this reporting requirement with one that asks the practitioner to report annual caseload of patients by month.

Percentage of active buprenorphine patients (patients in treatment as of reporting date) that received psychosocial or case management services (either by direct provision or by referral) in the past year due to: (1) Treatment initiation and (2) Change in clinical status.

Comments: HHS received numerous comments about the second proposed reporting requirement, "Percentage of active buprenorphine patients (patients in treatment as of reporting date) that received psychosocial or case management services (either by direct provision or by referral) in the past year due to: (1) Treatment initiation and (2) Change in clinical status." One commenter requested clarification on how psychosocial and case management services are defined and another commenter requested clarification on how clinical status is defined. Another commenter stated that psychosocial or case management services are not required or normative according to the evidence base. Another commenter expressed concerns that this reporting requirement will require patients to receive behavioral health services, but many will be unable to do so and will, therefore, refuse treatment. An additional commenter stated that this proposed requirement is irrelevant because so many patients receive services from a 12-step program.

Commenters provided several suggestions for alternative reporting requirements about psychosocial and case management services. One commenter suggested that practitioners be required to report the percentage of patients who had one hour of counseling in the past month. Another commenter recommended that the reporting requirement be divided into two separate measures: "(1) The number referred to psychosocial or case management services, and (2) the number who actually received psychosocial or case management services." An additional commenter recommended that the proposed reporting requirement be replaced with the following two questions: "(1) The percentage of patients receiving psychosocial counseling and/or other appropriate support services; and (2) The percentage of patients receiving case management services." Another commenter recommended that the proposed reporting requirement be replaced with: "(1) The number of patients who were provided psychosocial or case management services at the same location as the practitioner, and how frequently those patients utilized the services; and (2) the number of patients the practitioner referred for psychosocial or case management services at a different location." An additional commenter recommended that practitioners be required to report on the number of patients who were provided counseling services at the same location as the practitioner and how frequently those patients utilized the counseling services. One commenter also recommended that practitioners be required to provide information on the frequency, location, and type of psychosocial services provided. Another commenter recommended that practitioners be required to report whether the referral was to a more intensive or less intensive level of care.

Finally, one commenter recommended HHS collect data on referrals and behavioral health service provision using a six-point Likert scale.

Response: This reporting requirement has been revised and now asks the practitioner to report on the number of patients provided behavioral health services and referred to behavioral health services. By seeking information on the number of patients that were provided services and referred for behavioral health services, HHS believes this updated reporting requirement, as further elaborated upon in the report form instructions, will strike the appropriate balance between collecting valuable information needed to assess compliance with the rule and avoiding undue burden to practitioners.

Summary of Regulatory Changes

For the reasons set forth in the proposed rule and considering the comments received, HHS replaced the second reporting requirement with one that requires the practitioner to report on the number of patients provided behavioral health services and referred to behavioral health services.

Percentage of patients who had a prescription drug monitoring program query in the past month.

Comments: HHS received several comments about the proposed reporting requirement, "Percentage of patients who had a PDMP query in the past month." One commenter stated that this data would not be informative because his practice conducts these queries for all patients. This commenter also stated that the state PDMP should provide this information instead. Another commenter suggested that the PDMP query should take place quarterly. An additional commenter stated that HHS should identify a way to collect similar data in Missouri, which does not have a PDMP. One commenter recommended that practitioners also be asked about the number of patients who had a PDMP query before the prescriptions were filled.

Another commenter stated that practitioners receive alerts from local pharmacies and the State if a patient receiving buprenorphine attempts to fill another opioid prescription by any practitioner, and asked whether this information could be used as a response for this reporting requirement. The commenter noted that they do not routinely run PDMP data on patients receiving buprenorphine, but do query PDMP data for every controlled substance refilled by phone.

HHS also received several comments focused more broadly on diversion control. One commenter recommended that SAMHSA provide guidelines for practitioners to develop diversion control plans. Another commenter suggested that HHS require practitioners with a waiver under DATA 2000 to participate in PDMPs. Several commenters also recommended that HHS ask about the number of patients who received urine drug screens, the results of drug screens, and the number of patients who received call-backs for pill counts. Several commenters noted that not every practitioner has access to a PDMP and encouraged HHS to use language that would apply in those situations. Finally, one commenter recommended that HHS ask about PDMP use and drug-use monitoring screening tests using a six-point Likert scale.

Response: The intention of including PDMP queries was to assess a practitioner's compliance with the rule's requirements related to a diversion control plan. In light of the comments received, which focused more broadly on various aspects of diversion control, HHS determined that the best way to satisfy the intent of the proposal and assess compliance is to seek information about the features of the practitioner's diversion control plan, as required in § 8.620, more generally.

Summary of Regulatory Changes

For the reasons set forth in the proposed rule and considering the comments received, HHS modified the third reporting requirement to require the practitioner to report on the features of his or her diversion control plan.

Number of patients at the end of the reporting year who: (1) Have completed an appropriate course of treatment with buprenorphine in order for the patient to achieve and sustain recovery; (2) Are not being seen by the practitioner due to referral by the practitioner to a more or less intensive level of care; (3) No longer desire to continue use of buprenorphine; and (4) Are no longer receiving buprenorphine for reasons other than 1–3.

Comments: HHS received numerous comments about the proposed reporting requirement, "Number of patients at the end of the reporting year who: (1) Have completed an appropriate course of treatment with buprenorphine in order for the patient to achieve and sustain recovery; (2) Are not being seen by the practitioner due to referral by the practitioner to a more or less intensive level of care; (3) No longer desire to continue use of buprenorphine; and (4) Are no longer receiving buprenorphine for reasons other than 1–3." A large number of commenters expressed concern with the first item, noting that it suggests that buprenorphine treatment is temporary and/or that individuals who receive it are not in recovery. One commenter expressed concern with the third and fourth item, noting that it is difficult to differentiate between these two subsets of patients. Some commenters expressed that it is difficult to determine what number of patients "sustain recovery" and that SAMHSA should provide guidance on what constitutes an appropriate course of treatment. Another commenter stated that a practitioner is unable to control whether a patient follows through on a referral.

Other commenters recommended alternative questions to ask for this proposed reporting requirement, including: The percentage of patients who are prescribed an average dose of 16 mg or less; the percentage of patients who left treatment because the practitioner terminated treatment due to non-compliance; patient mortality rates; the number of patients who left treatment because of the financial cost of treatment; and the number of patients who left treatment to receive treatment in an either higher or lower intensity setting or were deemed successful.

Another commenter stated that the data collected in this reporting requirement should not include those lost to follow-up or relapse. Finally, an additional commenter stated that some patients at the commenter's facility graduate from treatment and only use counselors as needed. The commenter stressed that these patients should not be counted as patients not receiving treatment.

Response: HHS determined that the proposed requirement will be too burdensome for practitioners. Therefore, HHS is not including this reporting requirement in Subpart F.

Additional Reporting Requirements

Comments: HHS received several comments recommending additional reporting requirements for practitioners. One commenter recommended that the reporting requirements focus on quality measures rather than process measures. Another commenter recommended that HHS create a core set of requirements that practitioners attest to on an annual basis, which could include both quality and process measures.

Other commenters recommended HHS collect data on: The amount of buprenorphine that patients receive; the number of times they receive buprenorphine; the number of active patients for whom third party reimbursement was provided; patient mortality rates; frequency of patient visits; and the percentage of prescriptions written for less than 30 days, 30–59 days, 60–89 days, and 90 days or more.

Response: Because HHS aims to strike the appropriate balance between collecting valuable information to assess compliance with Subpart F and minimizing the burden on practitioners, these proposed reporting requirements will not be added. HHS believes that the requirements included in this final rule are sufficient to ensure compliance with the assurances to which the practitioner attests to in the Request for Patient Limit Increase.

Alternative Ways To Meet and Provide Reporting Requirements

Comments: HHS received a number of comments proposing alternative ways to collect data from practitioners. One commenter suggested that HHS obtain information by adding questions about psychosocial treatment to DEA's questions as an alternative to the proposed reporting requirements. Another commenter stated that the DEA audit program should be sufficient to ensure compliance. Other commenters suggested that data could be obtained from the state PDMP, from electronic medical record systems, or from insurance claims data. Finally one commenter recommended HHS incorporate these reporting requirements into the set of measures associated with financial incentives under the Centers for Medicare & Medicaid Services' new Medicare Incentive Payment System's program.

Response: The proposed alternative ways to collect data from practitioners will not generate all of the information HHS is seeking through the proposed reporting requirements. Therefore, HHS will not collect the data using any of these approaches.

Comments: HHS received several comments recommending that there be an electronic form through which practitioners can submit the required data.

Response: HHS will explore developing a form that can be submitted electronically through which practitioners can submit the required data.

Comments: HHS received several comments recommending HHS convene an expert panel to review and re-evaluate the reporting requirements either prior to adoption or after the first reporting period.

Response: HHS received numerous public comments regarding the reporting requirements during the comment period for the Medication Assisted Treatment for Opioid Use Disorders NPRM (published in March 2016), and during the comment period for the reporting requirements proposed in the SNPRM (published in July 2016). These comments were received from a variety of stakeholders, including experts in the field. Therefore, HHS does not believe that convening an expert panel is necessary to ensure that the reporting requirements are appropriate.

Comment: HHS received a comment recommending that reporting requirements be voluntary.

Response: HHS believes that making these requirements voluntary would dramatically compromise the quality and amount of data received. Therefore, HHS will make these requirements mandatory in order to ensure that HHS is able to assess compliance with the requirements of 42 CFR part 8, subpart F.

Comment: HHS received a comment recommending using the reporting requirement information to determine whether practitioners with the 100-patient waiver should be able to increase their patient limit to 275.

Response: Practitioners who are subject to the 100-patient limit are not required to report data.

Comments: HHS received comments recommending collecting reporting data from practitioners more than once per year.

Response: HHS believes that requiring practitioners to submit data more than once per year would be unduly burdensome.

III. Collection of Information Requirements

The SNPRM called for new collections of information under the Paperwork Reduction Act of 1995. The final rule calls for much of the same collections of information as the SNPRM. As defined in implementing regulations, "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. In this section, HHS first identifies and describes the types of information waivered practitioners must collect and report and then HHS provides an estimate of the total annual burden. The estimate covers the employees' time for reviewing and posting the collections required.

Title: Medication Assisted Treatment for Opioid Use Disorders Reporting Requirements.

Reporting, 42 CFR 8.635: Reporting will be required annually to assess compliance with the requirements of 42 CFR part 8, subpart F. Reporting requirements will include a request for information regarding: (1) Annual caseload of patients by month; (2) number of patients provided behavioral health services and referred to behavioral health services; and (3) features of the practitioner's diversion control plan. These requirements will be further specified in the report form instructions to be issued after finalization of this rule.

Annual burden estimates for these requirements are summarized in the following table:

42 CFR citation	Purpose of submission	Number of respondents	Responses/ respondent	Burden/ response (hr.)	Total burden (hrs.)	Hourly wage cost ($)	Total wage cost ($)
8.635	Annual Report	1,350	1	3	4,050	$64.47	$261,104

Comment: HHS received a comment stating that the estimated burden of three hours per year is inaccurate.

Response: While the commenter stated that the estimated burden of three hours per year is inaccurate, the commenter did not provide evidence to support their claim. As a result, HHS retains the original estimate of three hours per year. More information on this estimate can be found below in the Regulatory Impact Analysis.

IV. Regulatory Impact Analysis

HHS has examined the impact of this final rule under Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, September 19, 1980), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995), and Executive Order 13132 on Federalism (August 4, 1999). HHS has determined that this final rule is not a significant regulatory action as defined by Executive Order 12866, and will not have a significant economic impact on a substantial number of small entities. Although the reporting requirements have changed since the proposed rule, they have not done so in a way that would alter their estimated impact. As described below, the estimated costs associated with this final rule are below one million dollars each year, and the estimated per-practitioner burden is three hours annually, supporting the conclusion that this rule will not have a significant economic impact on a substantial number of small entities.

Under this final rule practitioners approved to treat up to 275 patients will have to submit information about their practice annually to SAMHSA for purposes of monitoring regulatory compliance. The goal of the reporting requirement is to ensure that practitioners are providing buprenorphine treatment in compliance with the final rule Medication Assisted Treatment for Opioid Use Disorders (81 FR 44711). It is anticipated that the data for the reporting requirement can be pulled directly from an electronic or paper health record, and that practitioners will not have to update their record-keeping practices after receiving approval to treat up to 275 patients. We estimate that compiling and submitting the report would require approximately 1 hour of physician time and 2 hours of administrative time. According to the U.S. Bureau of Labor Statistics, the average medical and health services manager's hourly pay in 2014 was $49.84, and the average hourly wage for a physician was $93.74. After adjusting upward by 100 percent to account for overhead and benefits, these wages correspond to a cost of $99.68 and $187.48 per hour, respectively. The cost of this reporting requirement per practitioner approved for the 275-patient limit is estimated to be the cost of 1 hour of a practitioner's time plus 2 hours of an administrator's time.

As noted above, using the mid-point estimate, we estimate that 1,150 practitioners will request approval for the 275-patient limit in year 1 and 200 practitioners will request a 275-patient waiver in subsequent years. We assume that all of these requests will be approved. The costs associated with this reporting requirement are reported below. In addition, it is estimated that SAMHSA will incur a cost of $100 per practitioner approved for the 275-patient limit to process the practitioner data reporting requirement. These costs are reported below as well.

We assume DEA will not incur additional costs in association with this final rule as DEA will incorporate site visits for practitioners with the 275-patient limit into their regular site visit schedule.

	Number of physician reports	Physician costs	SAMHSA costs
Year 1	1,150	$445,000	$115,000
Year 2	1,350	522,000	135,000
Year 3	1,550	600,000	155,000
Year 4	1,750	677,000	175,000
Year 5	1,950	754,000	195,000

List of Subjects in 42 CFR Part 8

Health professions, Methadone, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HHS amends 42 CFR part 8 as follows:

PART 8—MEDICATION ASSISTED TREATMENT FOR OPIOID USE DISORDERS

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 21 U.S.C. 823; 42 U.S.C. 257a, 290bb–2a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

■ 2. Amend § 8.630 by adding paragraph (b) to read as follows:

§ 8.630 What must practitioners do in order to maintain their approval to treat up to 275 patients?

* * * * *

(b) All practitioners whose Request for Patient Limit Increase has been approved under § 8.625 must provide reports to SAMHSA as specified in § 8.635.

■ 3. Add § 8.635 to read as follows:

§ 8.635 What are the reporting requirements for practitioners whose Request for Patient Limit Increase is approved?

(a) *General.* All practitioners whose Request for Patient Limit Increase is approved under § 8.625 must submit to SAMHSA annually a report along with documentation and data, as requested by SAMHSA, to demonstrate compliance with applicable provisions in §§ 8.610, 8.620, and 8.630.

(b) *Schedule.* The report must be submitted within 30 days following the anniversary date of a practitioner's Request for Patient Limit Increase approval under § 8.625, and during this period on an annual basis thereafter or on another annual schedule as determined by SAMHSA.

(c) *Content of the Annual Report.* The report shall include information concerning the following, as further detailed in report form instructions issued by the Secretary:

(1) The annual caseload of patients by month.

(2) Numbers of patients provided behavioral health services and referred to behavioral health services.

(3) Features of the practitioner's diversion control plan.

(d) *Discrepancies.* SAMHSA may check reports from practitioners prescribing under the higher patient limit against other data sources to the extent allowable under applicable law. If discrepancies between reported information and other data are identified, SAMHSA may require additional documentation from the practitioner.

(e) *Noncompliance.* Failure to submit reports under this section, or deficient reports, may be deemed a failure to satisfy the requirements for a patient limit increase, and may result in the withdrawal of SAMHSA's approval of the practitioner's Request for Patient Limit Increase.

Dated: September 21, 2016.

Kana Enomoto,

Principal Deputy Administrator, Substance Abuse and Mental Health Services Administration.

Approved: September 22, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–23277 Filed 9–23–16; 4:15 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–682603]

RIN 0648–XE336

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2016–2018 Atlantic Bluefish Specifications; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This action corrects the recreational harvest limit value published in the 2016–2018 Atlantic bluefish specifications final rule, which is effective August 1, 2016, through December 31, 2018. This action is necessary and intended to ensure the correct 2016–2018 bluefish recreational harvest limit values are provided to the public.

DATES: This correction is effective September 27, 2016.

ADDRESSES: Information on the August 4, 2016, final rule (81 FR 51370), which includes an Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available via the Internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, (978) 281–9112.

SUPPLEMENTARY INFORMATION:

Background

The August 4, 2016, final rule (81 FR 51370) set catch limit specifications (*i.e.*, commercial and recreational fishery quotas) for the 2016–2018 Atlantic bluefish fishery, and is effective August 1, 2016, through December 31, 2018. As part of that final rule, consistent with the Atlantic Bluefish Fishery Management Plan (FMP) specification setting process, specific recreational harvest limits were derived and provided to the public.

Classification

The Assistant Administrator (AA) for Fisheries, NOAA, finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and would be contrary to the public interest. This correcting amendment implements regulations as recommended by the Council and as described in the preambles to the harvest specification and management measures proposed rule (81 FR 18559, March 31, 2016) and final rule (81 FR 51370, August 4, 2016). The derivation process was correctly described in the proposed and final rules; however, the recreational harvest limit (RHL) was inadvertently published incorrectly at page 51371 of the final rule in "Table 1, Final 2016–1018 Bluefish Specifications." There would be no value in soliciting further comment on the corrected value in this rule, as the public has already had opportunity to review and comment on the process used to derive the RHL. It would be contrary to the public interest to delay implementation of the correction in this rule, because it will cause public confusion. For the reasons above, the AA also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and makes this rule effective immediately upon publication.

Need for Correction

The August 4, 2016, final rule outlined the calculations for the final specifications in a table, but one line of the table was inadvertently incorrectly updated when the most up to date recreational landings data for 2015 became available during the final processing stage of the rule. The table titled "Final 2016–2018 Bluefish Specifications", as published on page 51371 of the final rule incorrectly indicated in the last row that the recreational harvest limit (RHL) was 13,158,843 lb (1,500 mt) for 2016; 14,143,295 lb (6,414 mt) for 2017; and 15,116,768 lb (6,857 mt) for 2018. The corrected RHL for all three years is 11,581,548 lb (5,253 mt).

Correction

On page 51371 of the August 4, 2016, final rule (81 FR 51370), table 1 is corrected to read as follows:

TABLE 1—CORRECTED FINAL 2016–2018 ATLANTIC BLUEFISH SPECIFICATIONS

	2016		2017		2018	
	lb	mt	lb	mt	lb	mt
OFL	25,763,220	11,686	26,444,448	11,995	27,972,252	12,688
ABC	19,455,796	8,825	20,641,883	9,363	21,814,742	9,895
ACL	19,455,796	8,825	20,641,883	9,363	21,814,742	9,895
Management Uncertainty	0	0	0	0	0	0
Commercial ACT	3,307,485	1,500	3,509,120	1,592	3,708,506	1,682
Recreational ACT	16,148,311	7,325	17,132,763	7,770	18,106,236	8,213
Commercial Discards	0	0	0	0	0	0
Recreational Discards	2,989,468	1,356	2,989,468	1,356	2,989,468	1,356
Commercial TAL	3,307,485	1,500	3,509,120	1,592	3,708,506	1,682
Recreational TAL	13,158,843	5,969	14,143,295	6,414	15,116,768	6,857
Combined TAL	16,466,328	7,469	17,652,415	8,006	18,825,274	8,539
Expected Recreational Landings	11,581,548	5,253	11,581,548	5,253	11,581,548	5,253
Transfer	1,577,295	715	2,561,747	1,161	3,535,220	1,604
Commercial Quota	4,884,780	2,215	6,070,867	2,753	7,243,726	3,286
Recreational Harvest Limit	11,581,548	5,253	11,581,548	5,253	11,581,548	5,253

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 16, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–23216 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 187
Tuesday, September 27, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 951

[Docket Number DOE–HQ–2014–0021]

RIN 1990–AA39

Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation

AGENCY: Office of General Counsel, U.S. Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On August 3, 2016, the Department of Energy (DOE) issued in the **Federal Register** a notice and request for comments on a proposed information collection developed in connection with its proposed rulemaking under the Energy Independence and Security Act of 2007 (EISA). The notice stated that comments on the proposed information collection were to be submitted by October 3, 2016. At a public workshop held on September 16, 2016, to discuss the information collection proposal, and in written comments thereafter, members of the public requested an extension of time within which to submit comments. This document announces that the period for submitting comments on the proposed information collection is extended to November 7, 2016.

DATES: The comment period for the document published in the proposed rule section on August 3, 2016 (81 FR 51140) is extended. DOE will accept comments on the proposed information collection received no later than November 7, 2016.

ADDRESSES: Interested persons may submit comments on the proposed information collection identified by docket number DOE–HQ–2014–0021 and/or regulatory information number (RIN) 1990–AA39. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: Section934Rulemaking@Hq.Doe.gov.*
3. *Mail:* Ms. Sophia Angelini, U.S. Department of Energy, Office of General Counsel, Mailstop GC–72, Section 934 Rulemaking, 1000 Independence Avenue SW., Washington, DC 20585. Please submit one signed original and three copies of all comments submitted by mail.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* or the DOE Web site specifically established for this proceeding: *http://www.energy.gov/gc/convention-supplementary-compensation-rulemaking.* To obtain a copy of the proposed information collection instrument and instructions, you may go to the same Web site.

FOR FURTHER INFORMATION CONTACT: Sophia Angelini, Attorney-Adviser, Office of General Counsel for Civilian Nuclear Programs, GC–72, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone (202) 586–0319.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2014, DOE published a notice of proposed rulemaking (NOPR) in the **Federal Register** (79 FR 75076) in which it proposed regulations under section 934 of EISA to establish a retrospective risk pooling program whereby, in the event of certain nuclear incidents, nuclear suppliers would pay for any contribution by the United States government to the international supplementary fund created by the Convention on Supplementary Compensation for Nuclear Damage (CSC). On August 3, 2016, DOE published in the **Federal Register** a notice and request for comments (81 FR 51193) on a proposed collection of information that it is developing in connection with the NOPR for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The notice stated that comments regarding the proposed information collection were to be submitted by October 3, 2016. Also on August 3, 2016, DOE published in the proposed rules section of the **Federal Register** a notice of a public workshop (81 FR 51140) to discuss the proposed information collection. At the workshop held on September 16, 2016, several entities commented requesting additional time in which to submit further comments on issues raised at the workshop and in comments submitted in advance of the workshop. After the workshop, one commenter submitted a written request for an extension of the public comment period, until at least November 3, 2016. In response to public comment, DOE has determined that the request for an extension of time should be granted, and the public comment period will close on November 7, 2016.

Issued in Washington, DC, on September 21, 2016.

Samuel T. Walsh,

Deputy General Counsel for Energy Policy, Office of General Counsel.

[FR Doc. 2016–23271 Filed 9–26–16; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG69

Small Business Timber Set-Aside Program

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) seeks comments on a proposed amendment to its regulations governing the small business timber set-aside program (hereafter referred to as the "timber program") so that appraisals on small business set-aside sales be made to the nearest small business mill. Timber sale appraisals are performed for small business qualifying set-aside and non-set-aside sales. When the U.S. Department of Agriculture's (USDA) Forest Service (FS) offers timber for sale, it appraises its potential market value and sets the minimum bid that it will accept based on that appraisal. Currently, appraisals in small business set-aside timber sales take into account the haul costs to the nearest mill regardless of that mill's size. Since set-aside timber sales require the use of small business mills, SBA proposes that the appraisal on set-aside timber sales

be made to the nearest small business mill in order to accurately reflect the estimated cost to an eligible bidder. SBA is also requesting comment on a possible policy alternative that would use a weighted approach to appraising.

DATES: Comments must be received on or before November 28, 2016.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG69, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *For mail, paper, disk, or CD/ROM submissions:* Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416, or send an email to *brenda.fernandez@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Brenda J. Fernandez, Procurement Analyst, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW., 8th Floor, Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION:

Background and Rationale for Proposed Rule

In cooperation with SBA, the FS manages the timber program. The timber program was designed for small businesses whose product needs are timber. Throughout the country, the FS offers timber sales that are composed of multi-products for which the purchaser pays different rates for each product. Multi-product sales may be composed of sawlogs, pulp logs, biomass, or other products not generally processed into sawlogs. Timber sales that have substantial sawlog volume are targeted for the set-aside program. Small independent loggers, often called gypos, are identified as small non-manufacturers, and are eligible to purchase the set-aside timber sale and have to adhere to the contract rules of where the timber can be milled. The volume purchased by these non-manufacturers is credited, under the set-aside program, to the small business market share.

Section 15(a) of the Small Business Act authorizes small businesses to receive any contract which would "assur[e] that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns" and which would "assur[e] that a fair proportion of the total sales of Government property be made to small-business concerns." 15 U.S.C. 644(a). Contracts for the sale of government owned timber are, therefore, required to be set aside for small businesses in order to assure that small businesses receive a fair proportion of such sales. While the Small Business Act does not define "fair proportion," SBA interpreted "fair proportion" in adopting the market share system used today and detailed below. The D.C. District Court upheld this interpretation in 1974 in *Duke City Lumber Co.* v. *Butz,* 382 F. Supp. 362 (D.D.C., 1974), aff'd, 539 F.2d 220 (D.C. Cir., 1976).

Congress further decreed in section 2 of the Small Business Act that the "economic well-being [and] security of this Nation . . . cannot be realized unless the actual and potential capacity of small business is encouraged and developed." 15 U.S.C. 631. To that end, Congress directed all ends of the Government to "maintain and strengthen the overall economy of the Nation" by assuring that small businesses receive a fair proportion of total government contracts and total government sales. Through sections 2 and 15 of the Small Business Act, SBA is entrusted with keeping Federal government agencies accountable on their collective obligation to deliver a fair proportion of contracts and sales to small businesses. SBA's regulations, however, currently do not address how SBA calculates "fair proportion" in the context of government-owned timber sales. SBA's regulations also do not address how goods-for-services stewardship timber sales should be treated in the context of the small business fair proportion or market share calculation.

Establishing Hauling Cost Appraisals That Are Accurate

SBA proposes to amend its regulations to include instructions on how hauling costs are to be estimated in developing the appraised price for small business set-aside sales under the timber program. SBA's current regulations provide that on a set-aside sale the small business may not resell more than 30% of the advertised sawtimber volume to a large business concern in all FS regions outside of Alaska. As such, at least 70% of the advertised sawtimber volume must be processed at a small mill. This provision is known as the "30/70 rule." When the FS offers a timber program sale as a set-aside, it appraises its potential market value and sets the minimum bid that it will accept based on that appraisal. One factor in the appraisal is the haul cost that the purchaser (small or large) will have to absorb to bring the timber to a manufacturing facility. Currently, appraisals are made to the nearest mill regardless of that mill's size. Because of the locations and sparse number of remaining small sawmills, the current appraisal points used for calculating hauling costs may have prevented small mills from bidding on set-aside sales, since fuel and non-fuel costs for transporting the timber from the forest to the processing location may negate the bidder's profit margin of the purchase when the 30/70 rule is also applied.

In order to provide small businesses an ability to meet the requirements of the law as required under set-aside provisions, and to encourage small business competition, SBA is proposing that small business set-aside timber sales be appraised to the nearest small business mill to accurately reflect the haul costs to eligible bidders. As an alternative, SBA is also requesting comments on whether the requirement to appraise the set-aside timber sales to the nearest small mill should have some reasonable distance or haul cost limitation, such as 60 miles (from the sale area to the nearest mill), because it may not be economically feasible to haul timber over large distances. In addition, SBA is also requesting comments on whether all 100% of the hauling costs should be appraised to the nearest small business mill, or, when the nearest mill is a large business, whether 70% of the hauling costs should be appraised to the nearest small mill and remaining 30% appraised to the nearest large mill in accordance with the 70/30 ratio under the set-aside rule.

The proposed regulatory amendment would affect the FS timber program only. As noted below, FS and the Department of Interior's (DOI) Bureau of Land Management (BLM) are the primary timber "sales agencies." However, BLM's small business set-aside sales, which are limited to eight markets in Oregon (FS Region 6), are made in accordance with the terms of a separate Memorandum of Understanding (MOU) between SBA and BLM. Rather than setting forth considerations for small business market share computation methods, SBA's MOU with BLM affords SBA the opportunity to review BLM's annual timber sale plans prior to publication and to request set-aside sales under the authority of the Small Business Act. When BLM agrees to set-aside certain timber sales for small businesses, BLM consults with SBA concerning financial and other performance qualifications to be included in the conditions of sale. Accordingly, the proposed amendment to the timber program would have no impact on BLM's timber sale program since BLM's current policy is to appraise the hauling costs on its set-aside sales to the closest mill that qualifies as a small business under SBA's regulations. While SBA is also considering an amendment stewardship contracting to include the stewardship sawtimber volume in the small business market share calculation, this possible policy change would not impact BLM's use of stewardship sales since BLM already credits/counts the stewardship sawtimber volume in administering its set-aside program.

SBA invites comments on all aspects of this proposed rule, the timber program, and other policy changes currently under consideration. In particular, SBA requests comments on the proposed change to appraising the haul costs to the small business set-aside sales and the alternative weighted approach to appraising the haul costs using the 30/70 rule. SBA is also interested in comments on whether there should be a reasonableness test for distance from the sale area to the nearest qualifying small business mill and how this test should be applied. In addition, SBA invites comments on impacts of the potential inclusion of the stewardship sawtimber volume in the small business "fair proportion" calculation that SBA is currently considering but not proposing in this rule.

The federal government regularly sells timber and non-timber products from the federal forests managed by the USDA's FS, the DOI's BLM, the DOI's Fish and Wildlife Service, the U.S. Department of Defense, the U.S. Department of Energy, and the Tennessee Valley Authority. Collectively, these agencies are referred to as the "sales agencies" with FS and BLM being the primary sales agencies.

This proposed rule intends to amend SBA's regulations governing the timber program. As mandated by the Small Business Act, SBA and the sales agencies jointly set-aside timber program sales for exclusive bidding by small business concerns when market conditions demonstrate that small businesses are not receiving their fair share of timber volume under full-and-open competition or unrestricted sales. When the small business share of the timber market falls below a certain level, a small business set-aside sale is triggered.

In order to determine the small business market share that triggers a set-aside sale, FS calculates the current small business market share based on small business purchases of sawtimber volume sold under the timber program over a five-year period. This percentage, based upon historical purchases of sawtimber in the market area, sets the framework for what constitutes small businesses' fair proportion of the total sales volume. If at any time, the small business market share falls below this percentage, subsequent timber program sales would be set-aside for preferential bidding by small businesses. Set-aside sales in the timber program will continue until such time that the small business market share rises above the triggering percentage.

Currently, only the advertised sawtimber volume sold under the timber program is used to calculate the small business market share, which establishes whether or not a timber sale should be set-aside for preferential bidding by small business. Sawtimber volume sold under stewardship contracting is not presently considered in this calculation. SBA is considering a change to the calculation of the small business market share using the volume of sawtimber sold under both the timber program and stewardship contracting. By counting all sawtimber volume, regardless of which way it's sold, the triggers for set-aside procedures under the timber program could more accurately reflect the small business market for FS timber. However, SBA recognizes that including sawtimber volume sold through stewardship contracting in the small business market share calculation could, under some circumstances, result in there not being a set-aside sale where there otherwise would have been a set-aside had stewardship sawtimber not been included in the calculation and vice versa. SBA requests comment on the possible impacts to small businesses should SBA propose to include the stewardship sawtimber volume in the calculation of small business fair proportion. The Agency further requests comment on the need for transparency in the timber market as well as additional data in order to help SBA further analyze the impacts of including stewardship sawtimber volume in determining the small business fair proportion of the market used in triggering set-aside sales under the timber program.

It is also important to note that under this potential policy change, although the volume of sawtimber sold through the timber program and stewardship contracting would be used in the calculation of the size of the small business market share that triggers a set-aside sale, set-aside sales would only continue to occur under the timber program. Since set-aside sales are not provided for under stewardship contracting, such a policy change would not affect the FS's implementation of the stewardship process.

The following is an illustration of how including stewardship sawtimber may result in a more accurate depiction of the market that small businesses are operating in:

Example A. The target market share for small business is 47%. A timber program sale is conducted through full-and-open procedures. A small business wins the award which contains 1,000 CCF (one hundred cubic feet) of sawtimber. Since small business has attained 80% of the sawtimber market share (large business is allotted 20% of the offered timber program sale volume per FS regulations), unless that share drops below 37% (trigger occurs when small business market share is 10 percentage points or more below the established baseline market share) through subsequent timber sales, there will be no trigger for set-aside sales and future timber program sales will continue under full-and-open competition.

Example B. In the same market area, there have also been four (4) stewardship sawtimber sales. These are always conducted as full-and-open competition sales, because set-asides for small business are not provided for in implementing stewardship contracting projects. These four (4) awards have all gone to large businesses, each for 1,000 CCF. The next timber program sawtimber sale is for another 1,000 CCF, but because stewardship sawtimber volume is not counted, the attained small business market share, from example A, is still reflected as 80%. As a result, the next timber program sawtimber sale will be advertised as a full-and-open sale. Had the previous stewardship sawtimber volume been counted, the attained small business market share would have been reflected as only 20% (1,000 out of 5,000 CCF sold) and this next timber program sawtimber sale would have triggered a small business set-aside since the 20% small business attainment is more than 10 percentage points below the minimum established for the market share of 47% in that market area.

Example C. Even if two (2) of the stewardship sawtimber sales in example B had been previously won by small businesses the trigger for a set-aside of the next timber program sawtimber sale would not have occurred as small business would have been shown to have purchased a total market share of 60% (3,000 out of 5,000 CCF) which is better than the minimum established 47% share for that market area.

The FS received authority to implement pilot stewardship contracting projects in section 347 of the FY1999 Omnibus Appropriations Act (Pub. L. 105–277, sec. 347). Similarly, BLM was authorized to use stewardship contracting in 2003 (Pub. L. 108–7, 16 U.S.C. 2104). The purpose of stewardship contracting was to help achieve land management goals in National Forests and in the public lands managed by BLM, in addition to helping meet the needs of local and rural communities. Initially, stewardship contracting was scheduled to expire in 2003 and then again in 2013. The Agricultural Act of 2014 established stewardship contracting as a permanent authority (Pub. L. 113–79, sec. 8205).

Stewardship contracting is a goods-for-services arrangement that requires timber companies who cut trees on federal (FS and BLM) lands to perform other service work in exchange for the timber volume. Stewardship contracts fall into two general categories, Integrated Resource Timber Contract (IRTC) formats, which were developed for exclusive use in implementing stewardship contracting projects when the value of goods exceeds the value of services and Integrated Resource Service Contract (IRSC) formats, which were developed for exclusive use in implementing stewardship contracting projects when the value of services exceeds the value of the goods.

Developments in the Timber Industry

The entire wood products industry in the U.S. has undergone dramatic changes in the past three decades. The sale of timber from the National Forest System (NFS) has decreased from an annual timber volume of approximately 10 billion board feet in 1990 to approximately 2.9 billion board feet in 2015. While the reasons for this decline are not relevant to this proposed rule, the significance of this decline shows that all mills, both small and large, and the communities that they support have struggled to cope with the diminished supply of timber to sustain their operations. Coupled with other economic factors, such as the recession of 2008–2009 which saw a reduction in finished product markets, particularly the new single family home construction market, the decline in the timber industry has resulted in the closure of a significant number of small and large mills. The segment of the U.S. timber industry that derives its timber from the NFS does not operate in a vacuum but in the overall market for timber. In the United States, in the late 1990s, over 90% of the timber harvest volume came from private lands and only about 5% came from USFS sales. During the recession, the drop in new residential construction from 1.7 million units annually to 450,000 and a decline in home remodeling as residential mortgages tightened and home sales dropped combined to impact wood manufacturing. From 2005 to 2009, over 1,000 sawmills closed, comprising nearly 19% of all domestic mills in the forest sector. Many other mills operated at limited capacity. All mills, both large and small, have been forced to adapt and retool in response to these changes, including mills of all sizes that do not rely on timber supplied from NFS lands. Competition from overseas markets for private timber also complicates the ability for U.S. markets to compete. Thus, the importance of timber supply from FS lands may have increased, however the impacts to businesses may be attributed to a combination of supply, demand and global market changes. The closure of small mills of all sizes has had and continues to have an adverse effect on employment and the overall economy in rural timber communities where the timber industry is the leading provider of employment and income. Small mills depend on the SBA Timber Set-Aside Program to purchase their fair share of timber offered for sale by the FS.

SBA conducted annual field visits in different regions of the country and from interviews with small businesses in the logging, sawmill and other wood manufacturing industries has learned they have suffered immensely due to a diminished supply of timber. Based on the data from the U.S. Census Bureau's County (CBP) Business Patterns Reports available at *www.census.gov/econ/cbp/*, from 1997 to 2012, the number of small businesses (*i.e.*, fewer than 500 employees) in the logging industry, classified under North American Industry Classification System (NAICS) code 113310 (Logging), decreased 40%. Similarly, based on the data from U.S. Bureau's Economic Censuses available at *www.census.gov/econ/census/*, the number of small businesses (*i.e.*, fewer than 500 employees) in the sawmills industry, NAICS 321113, decreased 34% in the same period. The number of employees of small businesses fell by 40% for the logging industry and by 39% for the sawmills industry. The majority of remaining industries in NAICS Subsector 321 (Wood Product Manufacturing) also saw significant reductions in numbers of small businesses and workers employed by them.

The data also confirms that the number of large business firms (*i.e.*, with more than 500 employees) and number of people employed by them in those industries also decreased. For example, from 1997 to 2012, the number of larger firms decreased 44% in the logging industry and 42% in the sawmills industry. The number of employees hired by large businesses decreased 48% and 52%, respectively. Many other wood product manufacturing industries also saw similar decreases in number of firms and employment.

While total employment fell across both small and large firms in those industries, the proportion of employees that is employed by small businesses increased from 1997 to 2012. For example, as a percentage of total industry's employment, employment by small logging firms increased from 94% to 95%. Likewise, employment by small sawmills increased from 67% of total industry's employment in 1997 to 72% of total industry employment in 2012. This increase in the proportion of workers employed by small businesses has coincided with the significant decrease in the number of small businesses. This indicates that, even if they have decreased in number, small businesses are increasingly responsible for supporting employment in those industries.

As demonstrated in Tables 1, 2, and 3 below, stewardship timber volume (*i.e.*, sawtimber plus non-saw timber) accounted for a steadily increasing percentage of FS's total timber sales from 2004 to 2013. These tables provide data on total and stewardship timber sales for each of the nine FS regions, numbered Region 1 (R–1) through Region 10 (R–10). Region 7 was eliminated in 1965 when the current Eastern Region was created from the former Eastern and North Central Regions. The nine FS regions that exist today are as follows:

Region 1 (Northern)	Montana, North Dakota, NW corner South Dakota, and Idaho Panhandle.
Region 2 (Rocky Mountain)	Colorado, Wyoming, South Dakota, Nebraska, and Kansas.
Region 3 (Southwestern)	Arizona and New Mexico.
Region 4 (Intermountain)	Utah, Nevada, Western Wyoming, Southern Idaho, and a small portion of California.
Region 5 (Pacific Southwest)	California.
Region 6 (Pacific Northwest)	Oregon and Washington.
Region 8 (Southern)	Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, Oklahoma, and Arkansas.
Region 9 (Eastern)	Minnesota, Wisconsin, Iowa, Missouri, Illinois, Indiana, Michigan, Ohio, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Rhode Island, Connecticut, Massachusetts, Vermont, New Hampshire, Maine.
Region 10	Alaska.

In Fiscal Year 2013, stewardship timber sales accounted for 31% of all timber volume (timber plus non-timber) sold by the FS, up from only 5% a decade earlier. It should be noted that stewardship sawtimber volume is different from the total stewardship timber volume, and that all tables/references are based using the timber volume data only.

TABLE 1—TOTAL TIMBER VOLUMES SOLD BY EACH OF THE 9 FS REGIONS * (R–1 TO R–10) FY 2004–FY 2013

Year (FY)	R–1	R–2	R–3	R–4	R–5	R–6	R–8	R–9	R–10	All FS
All Sales, Sawtimber + Non-sawtimber (Volumes in Millions of Board Feet (MMbf))										
2004	159	163	49	107	208	434	359	319	85	1,883
2005	243	132	72	49	386	392	414	364	54	2,105
2006	189	165	69	68	228	470	858	381	83	2,511
2007	135	198	57	69	272	489	501	352	29	2,101
2008	186	201	43	70	109	525	539	349	4	2,026
2009	216	199	21	41	236	498	476	319	6	2,011
2010	180	196	46	60	252	424	540	358	45	2,100
2011	149	159	54	46	212	464	556	379	37	2,056
2012	144	196	32	53	219	512	521	419	41	2,137
2013	115	210	129	71	229	527	475	393	13	2,162

* Region 7 (R–7) was eliminated in 1965 as part of re-designation of FS regions.
Source: Timber Data Company; November 19, 2013.

TABLE 2—STEWARDSHIP TIMBER VOLUME SOLD BY EACH OF THE 9 FS REGIONS * (R–1 TO R–10), FY 2004–FY 2013

Year (FY)	R–1	R–2	R–3	R–4	R–5	R–6	R–8	R–9	R–10	All FS
Stewardship Timber/Service Sales (Volumes in Millions of Board Feet (MMbf))										
2004	7	9	25	12	23	19	0	0	0	96
2005	12	9	17	7	23	30	4	2	1	105
2006	48	16	18	15	24	64	42	4	0	231
2007	44	16	28	9	62	91	34	23	1	308
2008	64	35	21	12	14	100	28	10	1	284
2009	45	38	15	11	54	96	62	22	0	343
2010	56	70	26	38	75	120	50	50	0	486
2011	43	33	31	21	47	105	62	50	33	427
2012	41	35	19	22	102	175	92	67	40	592
2013	36	39	107	51	75	202	90	61	0	661

* Region 7 (R–7) was eliminated in 1965 as part of re-designation of FS regions.
Source: Timber Data Company; November 19, 2013.

TABLE 3—STEWARDSHIP TIMBER SALES AS A PERCENTAGE OF TOTAL TIMBER SOLD BY REGION, FY 2004–FY 2013

Year (FY)	R–1	R–2	R–3	R–4	R–5	R–6	R–8	R–9	R–10	All FS
% Stewardship										
2004	4	5	51	12	11	4	0	0	0	5
2005	5	7	23	13	6	8	1	1	1	5
2006	25	10	26	22	11	14	5	1	0	9
2007	33	8	49	14	23	19	7	6	2	15
2008	35	17	49	17	13	19	5	3	27	14
2009	21	19	72	27	23	19	13	7	0	17
2010	31	36	56	64	30	28	9	14	0	23
2011	29	21	59	47	22	23	11	13	9	21

TABLE 3—STEWARDSHIP TIMBER SALES AS A PERCENTAGE OF TOTAL TIMBER SOLD BY REGION, FY 2004–FY 2013—Continued

Year (FY)	R–1	R–2	R–3	R–4	R–5	R–6	R–8	R–9	R–10	All FS
2012	28	18	58	42	47	34	18	16	96	28
2013	32	19	83	72	33	38	19	16	0	31

* Region 7 (R–7) was eliminated in 1965 as part of re-designation of FS regions.
Source: Timber Data Company; November 19, 2013.

According to historical sales data, the average number of bidders is 1.02 for stewardship timber sales and 1.97 for timber program sales; a statistically significant difference. This suggests that stewardship timber contracting may have fewer competitors. On average, stewardship timber sales are substantially larger than timber program sales, especially those awarded to small businesses. According to the analyses of both timber program and stewardship sales data provided by FS, as shown below in Table 4, compared to timber program volume, small businesses acquired a larger percentage of stewardship timber volume in Region 2 (100%), Region 4 (100%), Region 8 (94%), and Region 9 (87%) where stewardship timber volumes are quite minimal relative to total volumes sold. However, small businesses received a lower percentage of stewardship timber sales in Region 1 (70%), Region 5 (49%), and Region 6 (56%) where stewardship timber sales are generally fairly large relative to total sales. While small businesses received a larger percentage of stewardship timber volume in five regions individually, in aggregate (*i.e.* when all regions combined) the small business share was substantially lower at about 62% under stewardship contracting, as compared to nearly 71% under the timber sales program. Thus, based on these data, SBA is concerned that small businesses may be less successful in getting their fair share of government timber sales under stewardship contracting projects than under the timber program in certain FS regions and markets and that this situation may get worse over time as more and more FS timber is sold through stewardship contracting, as indicated by recent trends shown above in Table 2. Accordingly, to address this issue, SBA is considering a policy change to include the stewardship timber volume in the calculation of small business market shares. SBA seeks comments on the potential impacts of this change in the methodology, and how any impacts to small businesses may vary across regions or across market areas within the region.

TABLE 4—TOTAL TIMBER VOLUMES SOLD UNDER TIMBER PROGRAM AND STEWARDSHIP SALES AND SHARES OF TIMBER SOLD TO SMALL BUSINESSES BY REGION *

Region	Total timber volume sold (1,000 CCF)						Share of timber sold to small businesses (%)		
	Timber		Stewardship		Total timber sales		Timber	Stewardship	Total
	Total	Small	Total	Small	Total	Small			
Region 1	1,949	1,454	304	213	2,253	1,667	74.6	70.0	74.0
Region 2	2,471	1,910	121	120	2,591	2,031	77.3	100.0	78.4
Region 3	615	615	62	62	677	677	100.0	100.0	100.0
Region 4	859	588	29	29	888	618	68.5	100.0	69.6
Region 5	2,484	1,261	230	113	2,715	1,373	50.7	48.9	50.6
Region 6	8,206	5,369	2,067	1,152	10,273	6,520	65.4	55.7	63.5
Region 8	4,434	3,546	139	131	4,572	3,677	80.0	94.4	80.4
Region 9	1,614	1,533	59	51	1,673	1,584	94.9	86.6	94.7
All Regions	22,632	16,275	3,011	1,871	25,643	18,146	71.9	62.2	70.8

* Region 7 was eliminated in 1965 as part of redesignation of FS regions. Region 10 was not included in FS calculations.
Source: FS calculations based on the Timber Data Company data for FY 2002–2010 for Regions 2 through 5, 8 and 9, and FY 2002–2015 for Regions 1 and 6.

Still, SBA faces data challenges in analyzing the impact on small businesses from a potential policy change to include the stewardship sawtimber in the calculation of small business fair proportion or market share used to establish a set-aside sale within the timber program. The FS conducted an analysis with FY 2002–2010 data for Regions 2 through 5, 8 and 9 and with FY 2002–2015 data for Regions 1 and 6. To bridge these gaps in the data, SBA evaluated the percentages of timber program and stewardship sales awarded to small businesses using the data from the SBA's Timber Sales System (TSS) for FY 2004–2014. These results, as shown below in Table 5, also showed fairly similar patterns as in the FS analysis in Table 4, with small businesses generally acquiring a relatively larger percentage of stewardship timber in most regions where stewardship contracting is limited and a smaller percentage in regions where stewardship timber sales are substantial relative to total sales, such as Regions 1, 5 and 6.

TABLE 5—SHARE (%) OF TOTAL TIMBER VOLUME SOLD TO SMALL BUSINESSES BY TYPE OF SALE—TIMBER PROGRAM (T) AND STEWARDSHIP (S)—BY FS REGION, FY 2004–2014 *

Year	Region								
	Region 1			Region 2			Region 3		
	T	S	Total	T	S	Total	T	S	Total
2004	70.2	....	70.2	57.3	....	57.3	100.0	....	100.0
2005	81.9	100.0	82.2	73.5	100.0	75.2	100.0	100.0	100.0
2006	81.3	89.4	83.5	82.1	54.5	79.6	100.0	100.0	100.0
2007	84.9	94.0	87.8	75.6	100.0	77.8	100.0	100.0	100.0
2008	89.3	85.5	88.0	100.0	100.0	100.0	100.0	100.0	100.0
2009	60.4	64.3	61.0	100.0	100.0	100.0	90.9	100.0	96.4
2010	86.6	38.5	66.9	100.0	100.0	100.0	100.0	100.0	100.0
2011	68.8	50.6	63.7	96.1	100.0	97.0	100.0	100.0	100.0
2012	90.8	15.2	69.8	93.6	100.0	94.8	100.0	100.0	100.0
2013	41.2	34.8	39.4	88.2	100.0	89.6	100.0	100.0	100.0
2014	48.5	100.0	54.1	44.4	100.0	53.4	100.0	100.0	100.0
All years	74.9	55.4	69.9	83.0	97.7	85.4	99.8	100.0	99.9

Year	Region								
	Region 4			Region 5			Region 6		
	T	S	Total	T	S	Total	T	S	Total
2004	66.5	....	66.5	78.3	....	77.7	71.2	....	71.2
2005	94.2	100.0	94.6	28.6	17.6	28.0	54.3	15.2	50.8
2006	77.1	81.5	78.0	28.1	57.4	30.8	57.8	67.7	59.3
2007	74.6	88.9	76.5	58.8	45.6	55.8	62.4	41.3	58.7
2008	76.9	91.3	79.3	86.6	95.7	87.4	63.7	59.5	62.9
2009	79.7	100.0	85.2	71.4	74.7	72.1	75.4	59.5	72.0
2010	100.0	66.7	79.8	62.8	56.4	60.5	64.7	61.2	63.7
2011	100.0	44.3	68.5	54.4	87.9	62.6	66.4	60.3	65.0
2012	96.8	100.0	98.1	79.2	40.6	62.7	64.6	57.6	62.1
2013	95.0	100.0	98.4	68.5	55.6	64.1	65.8	72.8	68.6
2014	100.0	42.4	65.1	37.6	86.0	44.6	70.5	70.1	70.3
All years	82.0	75.5	79.9	56.3	57.8	56.6	65.1	61.6	64.3

Year	Region								
	Region 8			Region 9			Region 10		
	T	S	Total	T	S	Total	T	S	Total
2004	89.3	....	89.3	78.8	....	78.8	100.0	....	100.0
2005	86.9	100.0	87.0	79.3	100.0	79.4	100.0	100.0	100.0
2006	74.1	100.0	75.3	92.7	100.0	92.7	100.0	....	100.0
2007	80.1	100.0	81.3	85.3	74.3	84.6	100.0	....	100.0
2008	85.3	97.9	86.0	89.4	100.0	89.6	100.0	100.0	100.0
2009	93.2	94.6	93.3	92.2	100.0	92.8	100.0	....	100.0
2010	85.4	95.7	86.4	87.8	95.7	88.8	100.0	....	100.0
2011	86.8	96.7	88.1	85.7	89.9	86.3	100.0	100.0	100.0
2012	91.3	78.8	89.1	88.4	98.2	90.0	100.0	100.0	100.0
2013	91.6	100.0	93.1	90.4	90.9	90.5	100.0	....	100.0
2014	77.2	89.9	80.4	84.3	80.2	83.6	100.0	100.0	100.0
All years	84.7	92.9	85.5	86.8	90.6	87.1	100.0	100.0	100.0

* Region 7 was eliminated in 1965 as part of re-designation of FS regions.
Source: Timber Sales System.

As shown below in Table 6, the data further indicates that, during FY 2004—2014, more than two-thirds of businesses (68% of all businesses and 67% of small businesses) that receive stewardship timber contracts also acquired timber through the timber program. Likewise, 87% of stewardship timber volumes sold to all firms and 83% of stewardship timber volumes sold to small firms was acquired by businesses that purchase timber through both stewardship and timber program sales (see Table 7 below). Except for Region 4 with respect to the number of firms and Region 3 with respect to timber volume (in both cases the percentages are less than 50%), the results are more or less similar across regions. The majority of stewardship timber purchasers successfully compete in both markets.

TABLE 6—NUMBER OF FIRMS GETTING TIMBER PROGRAM (T), STEWARDSHIP (S), AND BOTH (T & S) TYPES OF TIMBER SALES BY REGION, FY 2004–2014

Region *	T only	S only	Both (T & S)	Total S	(T&S)/total S (%)
Number of All Firms					
1	558	10	34	44	77.3
2	432	14	30	44	68.2
3	272	17	17	34	50.0
4	313	24	20	44	45.5
5	540	11	44	55	80.0
6	464	28	54	82	65.9
8	918	18	56	74	75.7
9	692	37	85	122	69.7
10	99	1	6	7	85.7
Total	4,288	160	346	506	68.4
Number of Small Firms					
1	546	9	28	37	75.7
2	407	14	28	42	66.7
3	268	17	16	33	48.5
4	300	21	17	38	44.7
5	516	9	38	47	80.9
6	447	26	40	66	60.6
8	861	17	49	66	74.2
9	645	34	78	112	69.6
10	97	1	6	7	85.7
Total	4,087	148	300	448	67.0

* Region 7 was eliminated in 1965 as part of re-designation of FS regions.
Source: Timber Sales System.

TABLE 7—VOLUME OF TIMBER SOLD TO FIRMS GETTING TIMBER PROGRAM (T), STEWARDSHIP (S), AND BOTH (C & S) TYPES OF SALES BY REGION, FY 2004–2014

Region * (1)	T only (2)	S only (3)	Both (T & S)		Total S (6 = (3 + 5))	S Under both/ total S (5/6) (%)
			T (4)	S (5)		
Timber Acquired by All Firms (in 1,000 CCF)						
1	1,193	156	2,370	1,045	1,201	87.0
2	2,675	56	1,642	769	825	93.2
3	297	212	499	186	397	46.7
4	605	179	604	310	489	63.4
5	1,241	40	4,843	1,235	1,276	96.8
6	2,610	188	6,247	2,489	2,677	93.0
8	6,069	257	4,434	967	1,224	79.0
9	3,400	107	3,415	583	690	84.5
10	491	6	456	375	381	98.5
Total	18,580	1,201	24,510	7,959	9,160	86.9
Timber Acquired by Small Firms (in 1,000 CCF)						
1	1,114	152	1,311	531	683	77.8
2	2,177	56	1,337	649	704	92.1
3	289	212	417	127	338	37.4
4	497	115	476	206	321	64.2
5	1,045	26	2,097	592	618	95.7
6	2,179	139	4,148	1,345	1,483	90.7
8	4,927	253	4,004	800	1,053	76.0
9	2,727	97	2,957	419	516	81.2
10	251	6	832	375	381	98.5
Total	15,207	1,055	17,580	5,043	6,097	82.7

* Region 7 was eliminated in 1965 as part of re-designation of FS regions.
Source: Timber Sales System.

The Timber Program

The FS sells logs in accordance with the National Forest Management Act, which describes the process for buying, paying for, harvesting, and removing wood from NFS lands. Pursuant to the Small Business Act (15 U.S.C. 644(a)), SBA established the timber program in 1958. At that time, the timber program was a mechanism for the USDA to set aside timber sales. In 1971, SBA and USDA signed a Memorandum of Understanding (MOU) which established the guidelines for determining "fair proportion," created a five-year re-computation period for determining the base average shares of timber purchases, and established a "trigger" mechanism for initiating set-aside timber sales. Currently, FS has 9 Regions comprised of 140 market areas, of which 139 are active as shown in Table 11. See *http://www.fs.fed.us/.* The FS sells timber through both the timber program and stewardship contracting. With respect to timber program sales, each FS market area has a distinct small business market share. This percentage, based upon historical sawtimber volume acquired by small businesses, sets the framework for what constitutes small businesses' fair proportion of the total timber program sawtimber sales volume. Whenever the small businesses market share drops 10 percentage points or more below the established small business market share for a market area, a set-aside sale is "triggered" and FS is required to offer set-aside sales to increase the small business market share. If small businesses do not submit bids, the set-aside sale is converted to a full-and-open sale in which other-than-small businesses can also compete.

Currently, FS does not consider the sawtimber volume from IRTC and IRSC stewardship contracting in calculating the small business market share. The omission of the stewardship sawtimber volume in the calculation may affect small business market shares in either direction relative to the current policy. For example, FS' Mt. Hood market area (located in Region 6) has an established small business market share of 80% (as calculated during the 2010 re-computation of small business market shares). Because 20% of FS' timber program sales must be competed as full and open in order to ensure that large businesses also have the opportunity to compete, 80% is the maximum allowable small business share and indicates a robust small business timber purchase market. Over the period from November 2010 through March 2015, twenty-six (26) timber sales were offered in the Mt. Hood market area. Of those 26 sales, sixteen (16) were stewardship timber contracts which included timber volume. Twelve (12) of these were awarded to small businesses under full and open conditions. Ten (10) of the 26 sales were timber program sales. Eight (8) were awarded as full-and-open sales, and two (2) were small business set-aside sales.

This data suggests that small businesses have been successfully obtaining timber volume in this market area, but because stewardship sawtimber volume is not included in determining what the correct small business market share calculation should be, the small business fair market share has dropped from 80% to 72%. This is one example of how not counting stewardship sawtimber volume in the calculation can influence what the small business established fair share should be. Based on the limited data available, as it appears, it is also possible that including the stewardship sawtimber volume in the calculation of fair proportion could have the reverse effect in some regions, increasing the five-year fair market share relevant to the current policy.

Public Comments in Response to SBA's Advance Notice of Proposed Rulemaking

In response to requests from timber industry stakeholders, SBA published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on March 25, 2015 (80 FR 15697) inviting the public to submit comments on or before May 26, 2015. Specifically, the ANPRM requested detailed comments addressing the possible inclusion of the stewardship contracting sawtimber volume in the small business market share calculations and the possible appraisal of small business set-aside sales to the nearest qualifying small business mill. SBA received responses from 842 commenters. The summary of comments is provided in the following sections.

Comments on the State of the Timber Industry

The ANPRM presumed that the U.S. timber industry has undergone dramatic changes in the past decades. As stated in the ANPRM, the supply of timber from the FS timber program decreased significantly over the past three decades impacting both large and small businesses.

Comments to the ANPRM provided more insights into the state of the timber industry. For example, according to comments from a trade group representing small timber products companies, Timber Products Manufacturers Association (TPMA), since stewardship contracting was first piloted, small sawmills' share of Federal timber has declined by 71%. For example, in 1993, 146 small sawmills shared access to the FS timber in the Western regions; in 2014, that number had decreased to 43 firms. According to comments, remaining small business sawmills have made changes in their processes and the way they do business to remain competitive and stay in business.

TPMA also commented that, as the number of small businesses declines, large firms are increasingly able to raise costs through anti-competitive means. That is, as the number of potential buyers for timber gets smaller, dominant firms are enabled to set the price. TPMA pointed to a study published by the SBA's Office of Advocacy. Innovation & Information Consultants, Inc., 2008, *Analyzing the Impacts of Antitrust Laws and Enforcement on Small Business,* prepared for the U.S. Small Business Administration, Office of Advocacy under contract no. SBAHQ–06–M–0476, available at *www.sba.gov.* The study found evidence of harmful anti-competitive behavior in the timber industry; however industry-wide trends indicated macroeconomic factors were equally important in the decline of small businesses. Specifically, the study indicated that a particular global forest products company made efforts to monopolize the red alder timber market in the Pacific Northwest by employing anti-competitive strategies. Still, antitrust litigation in the Northwest did not deter new entry into the market during this time. Thirty-one Washington and Oregon hardwood mills closed between 1980 and 2001, when the large company was suspected of anti-competitive behavior in those states.

In response to the ANPRM, other-than-small industry participants submitted data showing that, as the FS reduced its timber harvest by over 90%, the majority of sawmills in the western United States that existed in 1971 have now closed. According to a regional trade association representing large business operations, the Public Timber Purchasers Group (PTPG), between 1990 and 2010, 207 mills closed in Oregon (a decrease of 66%) causing a loss of 21,000 jobs. PTPG asserted that these economic forces have caused small sawmills to merge or be purchased. As a result, according to PTPG, there is only one operating small business sawmill capable of purchasing federal timber in some FS areas—and in some other areas, there are no longer small business purchasers at all. Additionally, a union representing manufacturing workers observed that, in Oregon, virtually all organized labor in the lumber manufacturing sector is found in mills with consolidated ownership.

Commenters also provided localized observations and data. In Bonner County, Idaho, according to the Bonner County Board of Commissioners, 800 logging and sawmill jobs have been lost and only one small sawmill remains. According to a commenter from Coos Bay, Oregon, one of the largest mill sites has been converted to a casino. An executive from a small lumber products company in Clarkston, Washington, spoke at a May 7, 2015 regulatory fairness hearing in Spokane about closing the company's Clarkston mill in 2009 because of the recession. However, partly because of small business set-aside timber sales from the Umatilla National Forest, the company has been able to reopen the Clarkston mill and support 80 jobs. It now operates two sawmills and employs 240 workers. Conversely, two small business sawmills in Montana initiated layoffs of between one-third and one-half of their workers.

Comments on the Current Timber Set-Aside Program

In response to SBA's invitation for comments on the current Program, 221 commenters expressed general support for the current Program. Commenters generally asserted that small mills depend on the Program to purchase their fair share of timber offered for sale by the FS. By contrast, large business mills appear to make greater use of private land as a reserve for harvesting timber.

TPMA commented that in addition to supporting small firms and their surrounding communities, small business set-asides do not significantly reduce federal revenues. The group's comment pointed to a government analysis showing that set-aside sales take in only two percent less than open sales. A study published in 2013 found that set-asides reduce FS revenue by 5%, and the effect of reducing competition by excluding large businesses is partially offset by increased small business participation. Athey, Susan, Dominic Coey, and Jonathan Levin. 2013. "Set-Asides and Subsidies in Auctions." American Economic Journal: Microeconomics, 5(1): 1–27, available at *www.aeaweb.org.* The commenter also posited that if small sawmills are pushed from the market, large firms would be able to drive down federal revenues from timber sales. The commenter pointed to revenue data from the Panhandle National Forest to assert that market competition from small businesses stabilize prices for government timber sales. TPMA asserted that because stewardship contracting is not part of the fair proportion calculation in the small business set-aside Program, small timber product manufacturing companies have sustained a market decline of 71% since the stewardship contracting was launched. The small business trade group observed that, in 2014, one-third of the timber volume offered by FS was distributed through stewardship contracting, including 38% in the western United States. In some regions, stewardship contracting exceeds 70% of FS timber volume transactions. According to the commenter, failure to include the volume of timber associated with stewardship contracting lowers the market share for small business set-aside sales.

SBA also received comments from a variety of local legislators who described how the timber set-aside program operates in their areas. According to the comments, in Klamath County, Oregon, the only operating sawmill is an other-than-small business, so instituting set-asides would impact the county's budget. By contrast, a legislator from Marion County, Oregon, commented that smaller mills that rely on set-asides support much of the county's employment. Fifteen years ago, the milling industry supported 63.5% of the employment in the North Santiam Canyon communities; because of the downturn in the industry, the industry now supports 41% of employment.

The Commissioners of Powell County, Montana, noted that the trend toward increasing stewardship contracts in three national forests—Beaverhead-Deerlodge, Helena and Lolo National Forests—has reduced the potential amount of funding to the county because stewardship contracting does not feature revenue sharing as timber program sales do. From 2001 to 2013, the percentage of stewardship contracting on the Beaverhead-Deerlodge and Lolo National Forests accounted for over 23% of the sawlog volume sold during that period.

A commenter from Salem, Oregon, responded that the local community has suffered a devastating impact because of the reduction in revenues from timber sales. According to the commenter, declining timber revenues has meant fewer jobs, less revenue for county services, and less revenue to support families.

Several private business commenters remarked that failure to include the volume of timber associated with stewardship contracting lowers the market share for small business set-aside sales. A lumber company in Lyons, Oregon, that employs 430 people commented that 38% of its federal timber was bought on a small business set-aside basis. The commenter expressed concern that half of the sales volume available to it is being distributed through stewardship contracting, which limits the volume available through timber program open and set-aside timber sales. A 93-year-old lumber company in southwest Oregon stated that 100% of its federal timber under contract was purchased through small business set-asides. The commenters worried that, without the small business set-aside program in place, large businesses would starve small businesses out of public timber.

Another small business lumber company in north central Idaho remarked that the small business set-aside program is non-existent in Nez Perce-Clearwater National Forest because in excess of 80% of the forest's timber volume is sold through stewardship contracts. The commenter stated that, because the stewardship program is not subject to set-asides, its business could not avoid bidding against large businesses.

From Montana, a family-owned sawmill and forest management company commented that 15 million board feet of logs from the Flathead National Forest has been made available through stewardship contracting, rather than through the timber sales program. The commenter observed that this volume would be enough to run its mill for nearly six months.

Comments With Requests for Government Action

A substantial number of commenters asserted that agency action is required to avoid irreparable harm to the competitive timber market in the United States, leading to the closure of many small timber manufacturers. Many commenters from small business mills are the primary employers in their rural communities, and they believe that the lack of action will result in thousands of jobs lost and the destruction of many of these communities. The small business industry group commented specifically that failing to include stewardship contracts in the small business timber set-aside program has decimated small timber manufacturers.

Several commenters also noted that large multinational companies have begun to aggressively pursue both timber program full-and-open and stewardship sales in an attempt to drive small businesses from the playing field. For example, a third-generation small business logging operation in Washington and Oregon found that stewardship contracting is replacing the timber sale program. The commenter purchases most of its federal timber from the Mt. Hood and Gifford Pinchot National Forests, but has seen a 90% reduction in available timber volume since 1990. The commenter observed that there are very few small business set-aside sales because of the predominance of stewardship sales, and speculated that large forest products companies have worked to drive small family-owned companies out of business in order to consolidate the market share.

A small business lumber company from Deer Lodge, Montana, operating in an area where the FS owns over 60% of timber lands, commented that it is dependent on the small business timber set-aside program. The commenter stated that it initially supported stewardship contracting, but did not expect that it would be a major part of FS's timber offerings. As the percentage of stewardship offerings has become a third of the overall timber program volume, the commenter predicted that it would only be able to continue operations if it has an opportunity to bid on a fair share of federal timber sales without interference from large businesses. The Mayor and City Council of Deer Lodge, Montana, also support the set-aside program, stating that the sawmill industry made up the cultural and economic basis for the community.

A small sawmill in Kamiah, Idaho, commented that it had been shut down during the 2008 recession, but started up again with 65 employees after it was auctioned off. The commenter responded that it has found predatory bidding in non-set-aside sales and, as a result, has not been able to purchase public logs in two years. The commenter stated that it is surviving only on private landowner logs, and it believes that its sawmill will fail and 65 jobs will be lost if the set-aside program is not amended. The Mayor of Kamiah commented that the city has one of the highest unemployment rates in Idaho. The Mayor wrote that losing the local sawmill industry would devastate the area economically.

A substantial number of commenters from across the western United States commented that their communities and families relied on the local sawmills. One commenter from Colville, Washington, responded that he has been on unemployment twice in the past three years because of timber shortages. An individual commenter from St. Regis, Montana, added that small family-owned forest product companies need the SBA set-aside program to ensure stable access to government timber. Similarly, an individual from Lyons, Oregon, commented that the set-aside program supported a stable environment for small-town families. A commenter from Weippe, Idaho, remarked that the sawmill that was founded there in 1947 has relied on set-aside sales to compete with large sawmills.

A union group commented that it opposes any government action and believes that agencies should craft a solution that does not disproportionately punish organized labor.

Several commenters pointed to Congressional efforts to force agency action. Congress has urged the Administration to address this issue through multiple bills and correspondence. In 2014, Congress included the following report language in the Joint Explanatory Statement accompanying Public Law 113–235, the Consolidated and Further Continuing Appropriations Act, 2015 (160 Cong. Rec. H9768, Daily ed. Dec. 11, 2014):

> The Forest Service is strongly encouraged to expeditiously prepare and publish draft rulemaking to establish a small business set-aside program for timber contracts undertaken using stewardship contracting authority that is consistent with previous commitments made by the Service and the Department of Agriculture on this matter.

Similar language on the need for either SBA or the FS to address the issue through regulation is included in the FY2016 appropriations bills or in Congressional correspondence to the agencies.

Comments on Including Stewardship Contracting Sawtimber Volume in Small Business Market Share Calculations

Over 300 commenters urged SBA to include stewardship sawtimber volume in the small business market share calculation, while 15 commenters opposed it. Based on SBA's analysis of both the available data and comments received in response to the ANPRM, SBA is considering including the stewardship sawtimber volume in the calculation of small business market shares. SBA's ANPRM requested comments on how the inclusion of stewardship sawtimber might impact future market share calculations, stumpage prices, land management activities, retained receipts, and sale values. SBA also requested comments on whether an increase in the utilization of stewardship contracts in a market area might result in a lower representation of small businesses successfully bidding for timber sales in that market area and whether this should lead to lowering the market share for small business set-aside sales in that market area when the FS and SBA compute small business participation. Commenters provided a wide range of views on these topics.

Of the 842 commenters, 327 suggested that stewardship sawtimber sales should be included in the calculation of set-aside trigger points. Further, 14 commenters urged SBA and FS to include the stewardship sawtimber volume in the upcoming (now recent) five-year re-computation of small business shares to ensure accurate representation of small business participation. TPMA, the small business trade group, commented that increasing use of stewardship contracting, in particular IRTCs, creates a "loophole" in the small business market share calculation. According to TPMA, as IRTC contracting becomes more prevalent, the calculated small business market shares become distorted because they are only computed based on a handful of sales. This is because one-third of the market volume is being transacted through stewardship contracts and is currently excluded from the small business market share calculation. TPMA asserted that the omission of stewardship contracts understates the volume of timber being transacted and thus results in the inflation of the calculation of the small business market share. TPMA pointed to the Payette market area, where there were only two standard timber sales contracts. TPMA asserted that excluding stewardship volumes from the calculation prevents small businesses from achieving a representative re-computation that is consistent with the Small Business Act.

Fifteen commenters stated that stewardship timber volume should not be included in the calculation. The PTPG commented that the goal of the stewardship program is to accomplish forest health, watershed improvement and similar projects with the sold timber offsetting some or all of the costs. Because the selection of stewardship contractors is a subjective process that uses a "best-value" process, PTPG asserted that stewardship contracting should be excluded because re-computations of market shares for set-aside sales should be based upon objective timber sale data. Also, PTPG commented that, if stewardship sales were included in the set-aside timber sale program, the number of potential contractors would be significantly limited for any stewardship sale designated as a set-aside.

Thirty-nine commenters expressed that failure to include the stewardship sawtimber volume in the small business market share calculation will adversely affect the small businesses which rely on the federal timber supply. These commenters suggested that the trend towards stewardship contracting negates the positive impacts of the small business timber set-aside program. In particular, a small business sawmill in Deer Lodge, Montana, and the largest private employer in Deer Lodge, commented that stewardship contracting has been increasing in use, both in terms of number of sales and sawlog volume. Although the business has promoted stewardship contracting as a positive method of resolving resource conflicts on National Forest Land, it supports including the stewardship sawtimber volume in the SBA set-aside calculations.

Similarly, a trade group in Idaho representing logging and wood hauling contracting businesses supported including stewardship contracting sawtimber in the calculation of shares of timber program sales acquired by small businesses. The trade group observed that, in some Idaho forests, the stewardship timber volume has exceeded over 80% of total timber sales in four of the last five years.

The comments from a small business trade group emphasized that adding the stewardship sawtimber would add transparency and diligence to the recordkeeping process. These commenters observed that, even within the timber program, the volume in transactions with small businesses is inaccurate because the calculations are based on volumes advertised and awarded, and does not include volumes added through contract modifications.

SBA's ANPRM requested comments as to how the stewardship sawtimber volume should be accounted for in calculating the small business market share. Six commenters suggested that FS simply use existing timber program sale rules and norms to count sawtimber volume from stewardship projects. TPMA asserted that adding stewardship sawtimber volumes to the calculation would not be difficult. According to TPMA, FS develops an appraisal for each stewardship opportunity to decide the value of the timber available to be exchanged for services. These volumes and values could be tracked and used to adjust proportions used in the Program. Additionally, TPMA commented that FS provides upon the requests of the Timber Data Company with Reports of Timber Sales (FS 2400–17) which contain timber volume data for all timber sale contracts.

Three commenters asserted that, depending on the market area, inclusion of the stewardship timber volume may increase small business participation in both stewardship contracting and the timber program. Five commenters felt that increased competition from the inclusion of stewardship sales would increase stumpage rates. The same number of commenters stated that inclusion of the stewardship sawtimber volume would reduce the number of bidders and decrease stumpage rates.

Six commenters felt that any financial impact on sales value is less important than the socioeconomic benefits. These commenters also suggested that while timber prices may increase with the inclusion of stewardship sawtimber volume in the small business market share calculation, it would have no impact to the treasury. Conversely, four commenters stated that inclusion of the stewardship sawtimber volume would reduce treasury revenue and the value of public timber.

Seven commenters felt that the impact on small market shares of including the stewardship sawtimber volume in the calculation would vary by market area. One commenter expressed that inclusion of the stewardship sawtimber volume would have a beneficial impact on future market shares.

Eleven commenters suggested that if stumpage rates were decreased, restoration activities, retained receipts and local employment would be negatively impacted. A small, second-generation, family-owned lumber manufacturing business in Eugene, Oregon, supported including stewardship sawtimber volume to prevent circumvention of the set-aside program.

Nineteen commenters went so far as to state SBA and FS have a legal obligation to include the stewardship contracting sawtimber volume in the small business market share calculation to ensure small businesses purchase a fair proportion of sawtimber volume. Under section 15(a) of the Small Business Act, SBA bears the responsibility of ensuring that small businesses receive a fair proportion of "total sales" of Government property. SBA believes that sawtimber transacted through stewardship contracting should be properly included as an element of "total sales" under the Small Business Act, because much of stewardship contracting is done through IRTC contracts where FS receives cash from the transaction.

While several commenters believed that the small business market share is overstated, overall small business base market share may actually be understated because small business' high share of the stewardship contracting sawtimber volume is not included in the base market share calculation. As noted above, stewardship sales account for approximately one-third of total timber sold by the FS. In the majority of FS regions, small businesses purchase the majority of the stewardship contracting timber volume. However, large businesses capture the majority of the stewardship contracting timber volume in some market areas. For example, according to comments, large businesses captured 75% of the stewardship volume in the St. Joe Market Area, presenting a challenge to two small sawmills in the area.

SBA's is considering a potential policy change to include stewardship contracting sawtimber volume in the calculation of small business market shares. SBA's analysis shows that failure to include stewardship contracting sawtimber volume may either favorably, unfavorably, or negligibly skew the base small business market shares used to determine when FS must set aside timber program sales in some market areas. Inclusion of stewardship contracting sawtimber volume in the small business market share calculation could also more accurately capture small business participation and ensure transparency of the Program, another justification under consideration.

SBA welcomes additional comments on the possibility of including the stewardship sawtimber volume in the calculation of base small business market shares. Specifically, SBA requests additional comments and data related to the calculation methodology and analysis set forth in this rule. SBA requests comments as to whether those regions or market areas where small businesses purchase a large percentage of sawtimber through stewardship contracting should receive different treatment in the computation of small business market shares and, if so, what that alternative treatment should be. Likewise, SBA requests comments as to whether those market areas where the stewardship contracting represents a large percentage of overall sawtimber volume should receive different treatment. Additionally, SBA seeks comments as to whether the inclusion of the stewardship sawtimber volume should be subject to any caps or other special considerations. SBA also seeks comment on its authority under section 15(a) of the Small Business Act to treat all stewardship sawtimber sales as an element of "total sales" and whether there are alternative treatments—

including whether to consider some or all stewardship contracts as an element of "total purchases and contracts" under section 15(a). In order to have the most robust picture possible, SBA is further requesting additional data regarding the potential impact of including the stewardship sawtimber volume in the small business market share calculation. SBA is particularly interested in any data suggesting potential impacts on future market shares and stumpage rates.

Comments on Changing Appraisal Point in Calculating Minimum Acceptable Bid for Set-Aside Timber Sales

SBA's ANPRM requested comments on several issues related to the appraisal methodology FS uses to appraise set-aside timber sales under the timber program: How to best reflect the actual haul costs to eligible small business timber set-aside purchasers; whether there should be special considerations in those market areas that do not have mills that would qualify as "small" under the SBA's criteria; how to account for the "30/70 rule" in the appraisal process; and whether trust funds would be impacted by changing the appraisal point in set-aside sales.

Regarding the appropriate appraisal point, 28 commenters stated that appraisal of haul costs should be made to the nearest small mill in set-aside sales while 12 commenters expressed that the appraisal should be made to the nearest mill regardless of size. Those in support of changing the appraisal point in set-aside sales to the nearest small mill believed that such an approach would more accurately reflect the realities faced by small businesses. Several commenters observed that, for its set-aside sales, the BLM appraises haul costs to the nearest small business facility capable of handling the timber volume in BLM's eight markets in Oregon. A small business commenter responded that the current process of appraising set-aside timber sales to a large business defeats the purpose of the set-aside program. The small business trade group commented that the appraisal of a set-aside sale should include a haul-cost adjustment to account for the actual cost of hauling. The same commenter pointed to the FS Timber Sale Preparation Handbook, Chapter 40, section 45.11 (FSH 2409.18), available to the public at *http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?2409.18,* which provides that the FS chooses an appraisal point where the manufacturing facility "is capable of" processing the end product being appraised." Because of the 30/70 rule, applying the Handbook approach should result in the FS appraising for haul costs to a small manufacturer, rather than the closest large business facility. SBA agrees that appraisal to a small business mill more accurately captures the cost to eligible bidders. As such, SBA is proposing to appraise haul costs to the nearest qualifying small mill in set-aside sales.

Ten commenters felt that a change in the appraisal process would require haul cost subsidies and lead to reduced revenue and reinvestment opportunities. The PTPG, for example, commented that changing the appraisal point would cause the FS to divert stewardship funds to subsidize long hauls to distant mills. Some set-aside sales could result in negative appraised value, according to the PTPG comments. Another commenter responded that a change to the appraisal point would divert federal timber away from union workers and would reduce federal timber receipt-sharing for rural communities.

Four commenters stated that a change in the appraisal point will not impact trust fund collections, while three commenters believed that trust fund deposits would be reduced. The large business trade group in particular commented that, if the appraisals resulted in below-cost timber sales, rural communities would be harmed by the reduction in federal timber payments. The same commenter responded that a change in the appraisal point would cause inefficiency by allowing distant mills to purchase set-aside logs.

Thirteen commenters felt that FS and SBA should take greater steps to enforce the 30/70 rule in set-aside sales. Fifteen commenters felt that appraisal should be made to the nearest small mill only if it is located within a reasonable distance from the sale. These commenters believed that FS should suspend the set-aside or waive the 30/70 rule if no small mills are located within a reasonable distance of the sale. Seven commenters expressed that the 30/70 rule should either be eliminated altogether or waived for non-manufacturers when no small mill is present. Eleven commenters felt that inclusion of the 30/70 rule in appraisal point calculations would unnecessarily complicate the process, increase risks, and reduce stumpage rates and revenue.

Although commenters to the ANPRM proposed various alternatives as to how haul costs should be appraised in small business set-aside sales, none of the commenters provided any data that would adequately support one alternative over the other. As such, SBA requests additional comments regarding the other alternatives identified in comments to the ANPRM. Specifically, SBA requests comments as to whether haul cost adjustments should be made for non-manufacturers. Further, as noted above, several commenters recommended appraisal to the nearest small mill only if it is a "reasonable distance" from the sale. SBA requests comments as to what constitutes a reasonable distance. SBA also requests examples of market areas where the recommended reasonable distance would make a significant difference in the appraisal price. Understanding that any sale price accepted by the government must be "fair and reasonable," SBA requests comments as to why an increased appraisal cost to the nearest small mill would still support such a finding.

SBA is also aware that certain market areas do not have small mills located within their geographic boundaries. Accordingly, SBA requests additional comments regarding potential geographic exceptions for market areas with no small mills.

Finally, with respect to appraising haul costs with respect to the 30/70 rule, SBA requests comments as to whether SBA should consider, when the nearest mill is a large business, appraising 70% of the haul costs to the nearest small mill and 30% of the haul costs to the nearest large mill. SBA specifically requests comments as to whether such an approach is or is not favorable, given that it may accurately reflect the true costs to haul the timber, but may unnecessarily complicate the process.

SBA notes that a number of commenters interpreted SBA's ANPRM to propose a change of the appraisal point in all timber program sales. This is not SBA's intent. As noted above, SBA is proposing that the appraisal be made to the nearest small mill only in the case of set-aside sales.

Comments on Other Issues

SBA notes that a number of commenters interpreted SBA's ANPRM as a proposal to subject stewardship contracting to the procedures of the small business timber set-aside program. For example, a large business trade group stated that, if stewardship sales were included in the set-aside timber sale program, the number of potential contractors would be significantly limited for any stewardship sale designated as set-aside. The same commenter remarked that stewardship set-aside sales would complicate the application of the 30/70 rule. The commenter also noted that if a stewardship sale is designated by the

SBA as set-aside and there are no local small business mills, local labor would not be involved in the processing of those logs. Another industry commenter predicted that fewer acres of at-risk forest would be restored if stewardship contracts were subject to the set-aside requirement, and this would be contrary to congressional authorization of local preference and best-value contracting. A union commenter responded that the inclusion of stewardship contracts in the set-aside program would circumvent an award to the most local and economic mill in favor of a small business that could potentially be hundreds of miles away. Six commenters felt that small businesses already purchase a substantial share of the federal sawtimber. Conversely, the small business trade group stated that stewardship sales should be set aside, and the result would be preservation of competition for government sales.

It is not the intent of this proposed rule, however, to apply the set-aside rules to stewardship contracting. The intent of this rule is only to define, under authority of section 15(a) of the Small Business Act, what procedures SBA should use to calculate the proportion of "total sales" of timber flowing to small businesses. SBA is considering whether to include the stewardship sawtimber volume purchased by small businesses in the calculation of small business base market shares used in triggering timber program sale set-asides, but SBA is seeking comments and data before moving forward with such a policy change.

Approximately 45 commenters urged SBA and FS to conduct a comprehensive review of small business timber sale set-aside program procedures before implementing any changes. These commenters observed that SBA and FS rules for the set-aside timber sale program have not been updated to reflect the changing industry infrastructure or federal timber supply. Other commenters disagreed, urging SBA to make these changes prior to the October 1, 2015 re-computation. These commenters also emphasized that they have been seeking these changes for many years and saw further reviews or studies merely as another delaying tactic.

An additional five commenters felt that the re-computation period should be shortened to ensure continued accurate representation of market shares. Three commenters suggested that the structural re-computation method should be eliminated altogether. One commenter suggested carrying forward market area deficits into the next five-year period. SBA believes these issues are more appropriately addressed through negotiations between SBA and FS.

Potential Changes to the Timber Program Currently Under Consideration

As discussed in detail above, SBA is considering including the volume of sawtimber sold through stewardship contracting in developing the 5-year re-computation of small business market shares which are used to determine when timber program sales must be set aside for small businesses in the FS regions. SBA recognizes that in some regions, small businesses are successfully competing for full-and-open sales under the stewardship contracts. This possible policy would not likely alter that fact. SBA also recognizes that in some regions, small business may be successfully winning under timber program sales without set-asides. Again, this policy would not be intended to alter that fact. In some regions, counting the stewardship sawtimber volume may result in triggering a set-aside opportunity that might not otherwise occur without this new policy in place. In others, counting the stewardship sawtimber volume may result in removing a set-aside opportunity where one previously existed. In still other regions, including the stewardship sawtimber may have no impact relative to the status quo. Regardless, this policy under consideration would establish a transparent process across all FS regions.

Compliance With Executive Orders 12866, 13563, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5.U.S.C. 601–612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the SBA's Regulatory Impact Analysis can be found below. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 80, *et seq.*

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The proposed rule furthers statutory intent that small business concerns receive a fair proportion of the total sales of Government property. *See* Section 2(a) of the Small Business Act (15 U.S.C. 631(a)); Section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

Because of the locations and sparse number of the remaining sawmills, current appraisal points used for assessing hauling costs may have prevented many small sawmills from bidding on set-aside timber sales, since fuel costs for transporting the timber from the forest to the processing location may negate the profit margin of the purchase. As such, the proposal to appraise set-aside haul costs to the nearest small business mill is necessary to accurately reflect the costs to eligible bidders.

As noted above, SBA is also considering a potential policy change, but not proposing in this rule, to include the stewardship sawtimber volume (from both the IRTC and IRSC contracts) for the calculation of the small business fair proportion market share of timber program sales. To assess the trends on timber program l and stewardship timber sales and impacts to small businesses from such a policy change, SBA conducted multiple analyses with the limited data available. The results showed that timber program set-aside sales have declined since stewardship contracting began and that each FS region has steadily increased the availability of stewardship contracting during the period from 2004 through 2014. In addition, in several FS regions, especially those where timber sold through stewardship contracting is large relative to total timber sold, and in aggregate (*i.e.*, all regions combined) the percentage of timber purchased by small businesses is lower under the stewardship program than under the timber program. Thus, the failure to include the volume of sawtimber sold through stewardship contracting could overstate or understate the small business market share for set-aside sales under the timber program. The available data indicates that, with the omission of the stewardship sawtimber, small business market shares could be understated for regions where small mills dominate the stewardship market and overstated for regions where large businesses dominate that market. Further, including the stewardship sawtimber volume could more accurately reflect small business participation rates for purposes of calculating the set-aside trigger point in the timber program, regardless of the direction of the impact on small businesses. While SBA is not proposing in this rule to include the stewardship sawtimber volume in the small business fair proportion or market share calculation, the Agency is seeking public comment on impacts of this potential policy change in the future.

2. What are the potential benefits and costs of this regulatory action?

SBA's proposal to appraise small business set-aside timber sales to the nearest small business mill would enable small businesses to comply with existing laws affecting set-aside timber sales while promoting an atmosphere more conducive for them to participate in the overall FS timber market. Using the appraisal data received from FS, SBA estimated total sales to be about 2,900 for FY 2009–2014, of which 86% were sales to small businesses. Using the same data, excluding special salvage timber set-aside sales, SBA identified 156 small business set-aside sales (or 5.3% of all sales and 6.2% of all small business sales) that were appraised to a large business mill. A regional breakdown of these data is provided below in Table 9, below. Based on the data obtained from SBA's Timber Sales System (TSS), SBA estimated total average receipts FS received for FY 2002–2014 for all Regions to estimate the cost (*i.e.*, receipt loss) to FS from the SBA's proposed change.

The FS conducted an econometric study to assess the impacts of SBA's proposal to appraise hauling costs of all set-aside timber sales to the nearest small mill and potential policy change to include the stewardship sawtimber volume in the small business fair proportion or market share calculation. Specifically, FS estimated a stumpage equation for each FS region outside of Region 10 (Alaska) with a bid premium (*i.e.*, difference between bid price paid and reserve/minimum bid price set by FS) as a function of a number of variables, including the number of bidders, total haul miles, logging costs, total volume harvested, time trend, and a series of dummy variables indicating whether the sale was a small business set-aside sale, a salvage sale, or a stewardship sale. These results are provided in Table 8, below.

As can be seen from the results in Table 8, the estimated equations explained about 35% of total variation in bid premiums for Regions 1, 3, and 5, followed by 16% for Region 6 and less than 10% for remaining affected FS regions. Thus, the results suggest that several other relevant factors may have been needed to explain the variation in bid premiums.

TABLE 8—STUMPAGE PRICE EQUATIONS ESTIMATED FOR REGIONS 1 TO 9 BY FOREST SERVICE DEPENDENT VARIABLE

[Bid premium, a difference in the winning stumpage price minus the reserve price ($/CCF)]

Regions	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 8	Region 9
Independent Variables	Parameter Estimates							
Intercept	* −15.41	100.19	−0.02	−28.19	** −15.74	** −30.67	−78.19	807.06
Lumber Price Index	** 0.07	−0.14	0.00	0.17	* 0.02	0.06	....	....
Hardwood Price Index	....	....	....	....	....	....	0.09	−4.22
Softwood Price Index	....	....	....	....	....	....	0.24	−1.7
Number of Bidders	** 8.54	6.6	** 4.66	** 12.97	** 10.67	** 9.79	** 18.99	* 70.01
Total Volume Harvested (1,000 CCF)	−0.58	−0.65	−0.20	** −1.59	0.15	** −0.58	** −5.7	** −117.93
Logging Costs ($/CCF)	....	−0.59	0.00	* −0.16	....	* 0.06	** 0.21	−4.55
Contract Costs ($/CCF)	0.19	0.29	0.06	0.02	....	−0.08	** −2.18	−0.56
Distance to the Nearest Mill (miles)	−0.02	0.35	0.004	−0.01	** −0.04	** −0.06	−0.02	....
Hauling Costs ($/CCF)	....	....	....	....	....	....	....	2.89
Logging Index	* −2.38	....	....	....	....	....	....	....
Sealed Bid Dummy (0, 1)	0.84	29.59	−2.58	−12.43	** 5.35	** 7.52	* 28.44	** 153.32
Set-Aside Dummy (0, 1)	** −7.88	−5.87	....	−12.84	−1.04	* −4.77	** −12.29	** −131.51
Salvage Sale Dummy (0,1)	0.75	1.77	0.11	7.94	** 6.48	** 6.26	** −25.66	* 175.88
Stewardship Dummy (0,1)	−1.38	−2.75	* −3.05	−14.97	* 5.75	* 5.44	8.96	90.06
Time Trend	−0.31	−5.32	−0.01	2.011	−0.42	0.46	1.73	14.38
R2	0.38	0.04	0.37	0.06	0.36	0.17	0.09	0.03
R2-Adjusted	0.37	0.01	0.34	0.03	0.35	0.16	0.08	0.02
Mean of Dependent Variable	29.85	20.16	3.70	23.55	16.83	22.62	34.92	168.38
No. of Observations	554	627	245	487	973	2,117	2,627	1,883
No. of Observations Used	544	480	210	364	727	1,731	2,273	1,628

Source: USDA Forest Service Econometric Study.

* Significant at the 5% level.

** Significant at the 1% level.

Note: The significance levels are based on the Heteroscedasticity consistent standard errors. The USDA/FS results didn't include Region 10 (Alaska). Region 7 was eliminated in 1965 as part of re-designation of FS regions.

Impact of SBA's Proposal To Appraise Any Small Business Set Aside Timber Sale to the Nearest Small Business Mill

To assess the impact of changing the appraisal point for the small business set-aside sales to the nearest small business mill, SBA analyzed the appraisal data provided by FS and timber sales data from TSS. Specifically, SBA received eight different tables from FS with appraisal data for Regions 1 through 9 (the data did not include Region 10). Each table included the appraisal point for each sale during fiscal years 2009–2015, by region. SBA merged the eight tables into one, and then cleaned and reformatted several variables. For example, the numerical value for distance to the nearest small mill was cleaned by taking out the character values (*e.g.* "mi." = miles). Likewise, the number and size of bidders were separated or reformatted as characters (type of the bidder such as small non-manufacturer, small manufacturer, etc.) or number of bidders, as appropriate. For example, if the original variable included 1–SN and 4–SM in one cell, then one variable was created for SN (small non-manufacturer) and another variable for SM (small manufacturer) and 1 was assigned to the former and 4 to the latter. The cleaned data were then filtered to identify all small business set-aside sales (*i.e.*, set aside = Yes) that were appraised to a large mill (*i.e.*, appraisal point = LM (LM = Large mill/manufacturer)), because these are the cases that will be impacted by the SBA's proposal. When compared with the TSS data, the FS appraisal data for fiscal year 2015 were found to be incomplete and was not included in the analysis.

As shown in Table 9 (below), the results from the FS appraisal data indicate that the SBA's proposal to appraise the small business set-aside sales to the nearest small business mill would impact 5.3% of all sales and 6.2%of all small business sales. On an annual basis, the proposed change would benefit approximately 65–70 small businesses that participate in set-aside timber sales.

TABLE 9—COUNT OF TOTAL AND SET-ASIDE SALES AND AVERAGE NUMBER OF BIDDERS PARTICIPATING IN SET-ASIDE SALES APPRAISED TO A LARGE MILL, FY 2009–2014

FS Region *	Total number of sales		Set-asides appraised to a large mill		
	All sales **	Sales to small businesses	Count of sales	Share of all sales (%)	Average historical participation/number of bidders affected
1	159	129	12	7.5	4.8
2	256	238	2	0.8	0.3
3	42	42	0	0.0	0
4	112	110	1	0.9	1
5	195	146	32	16.4	10.7
6	397	292	41	10.3	18
8	858	772	41	4.8	16
9	897	787	27	3.0	17.2
Total	2,916	2,516	156	5.3	68.0

* Region 10 (Alaska) was not included in the FS appraisal data and Region 7 was eliminated in 1965 as part of re-designation of FS regions.

** Includes sales for which size/type of the purchaser was missing but excludes sales for which region was not specified. Salvage timber sales were also excluded.

Source: FS appraisal data and SBA calculations.

Using the FS appraisal data, SBA was also able to estimate distance to the nearest small mill from the nearest large mill for each set aside sale that was appraised to a large mill and some key summary statistics for the same. These results are provided in Table 10, below. The median distance to the nearest small mill is about 62 miles and the mean distance about 66 miles. This analysis does not reflect the more appropriate analysis of the distance from the sale to the nearest mill and small mill, for which data were not readily available.

TABLE 10—SUMMARY STATISTICS OF DISTANCE BETWEEN THE NEAREST SMALL MILLS AND THE CURRENT LARGE MILL APPRAISAL POINTS (IN MILES), FY 2009–2014

Region *	First quartile (25%)	Median (50%)	Third quartile (75%)	Mean	Standard deviation	Minimum	Maximum	Number of observations
1	37.0	42.0	65.0	52.8	29.1	22	108	12
2	132.0	132.0	132.0	132.0	0.0	132	132	2
3	(no Region 3 set-aside sales appraised to a large mill)							
4	6.0	6.0	6.0	6.0	0.0	6	6	1
5	89.0	101.0	136.0	108.6	54.0	1	195	32
6	30.0	65.0	90.0	66.5	44.6	0	163	41
8	30.0	97.0	97.0	63.9	34.8	10	97	41
9	10.0	15.0	25.0	22.2	18.3	5	70	27
Overall	23.5	62.2	97.0	66.2	48.2	0	195	156

* Region 10 was not included in the FS appraisal data and Region 7 was eliminated in 1965 as part of re-designation of FS regions.

Source: FS appraisal data and SBA calculations.

With respect to the impacts of the proposed change on bid/stumpage price and on FS receipts from timber sales, FS econometric/stumpage equations included two variables related to hauling costs, namely distance to the nearest mill (for Regions 1 through 8) and total hauling costs (for Region 9) (see Table 8). While FS, based on its conceptual analysis of relationships among reserve price, bid price, bid premium and hauling costs, expected these variables to have a negative impact on bid premium, the results were rather mixed. Specifically, the estimated coefficients associated with distance to the nearest mill were negative for Regions 1, 4, 5, 6, and 8, and positive for Regions 2 and 3. The estimated coefficient for hauling costs was also positive for Region 9. Among the regions with a negative coefficient for distance to the nearest mill, the coefficient was significant only for Regions 5 and 6.

Amid these results, FS concluded that, conceptually, both FS receipts and money flowing into the trust funds from timber receipts will decrease under the SBA's proposal to appraise the set-aside timber sales to the nearest small mill, but without information on the number of set-aside sales that would be affected and additional hauling costs incurred in each affected sale, it is not possible to quantify the financial impacts. However, SBA was able to fill these gaps in the FS analysis by estimating cost (receipts loss) to FS from the SBA's proposal to change the appraisal point for set-aside sales to the nearest mill by combining the results from the FS appraisal data (*i.e.*, number of set-aside sales affected and distance from the current appraisal point to the nearest small business mill for those sales), FS econometric results (*i.e.*, the estimated coefficients associated with distance to the nearest mill and hauling costs), and TSS timber sales data. This analysis is done only for Regions 5 and 6 because these are the only two regions where the estimated coefficient for the distance to the nearest mill was significant and had the FS expected negative sign.

Accordingly, SBA estimates cost or receipt loss to FS due to the proposed change to use the nearest small business mill to appraise the set aside sales as follows:

Receipt loss = regression coefficient for distance to the nearest mill (Table 8) × median distance to the nearest small mill (in miles) (Table 10) × number of set-asides appraised to a large mill (Table 9) × average volume of set-aside sale (CCF) from TSS.

The average volume of set-aside sales was based on the FY 2009–2014 data from TSS. Accordingly, receipt loss for Region 6 is estimated to be about $1.07 million ($-0.057 \times 65 \times 41 \times 6{,}979 = -1{,}066{,}439$), which is about 0.9 percent of total FS timber receipts for Region 6, estimated at about $124 million (*i.e.*, total volume times average bid price) for FY 2009–2014. Similarly, for Region 5, receipt loss is estimated at about $0.91 million ($-0.045 \times 101 \times 32 \times 6{,}261 = -908{,}634$), which is about 2.4 percent of total FS timber receipts for Region 5, estimated at about 38 million (*i.e.*, total volume times average bid price) for FY 2009–2014. These receipts losses to the FS are benefits to small businesses in the form of lowered hauling costs to transport their set-aside timber purchases to a small mill. With lower hauling costs to small businesses, they are likely to bid more for the set-aside timber sales, which would offset some of the receipts losses to the FS due to the proposed change.

FS expressed concerns that by limiting the receipt impact assessment to only Regions 5 and 6, SBA's regulatory impact analysis of the proposed change is incomplete. FS argued that the two regions examined are not representative of all regions and the results cannot be generalized across the country. As shown in Table 8 (above), the FS econometric results do not support a similar analysis for all affected FS regions. For example, the estimated coefficients for distance to the nearest mill (Regions 2 and 3) and hauling costs (Region 9) were positive, although not significant. Additionally, there were no set-aside sales in Region 3 that were appraised to a large mill. Thus, the proposed change would have no impact in Region 3. Using a positive coefficient for Region 2 would yield a counter-intuitive result of positive receipt impact to FS from the SBA's proposal to appraise the hauling costs for set-aside sales to the nearest small mill, which would make no sense. The same is also true for Region 9. Additionally, SBA has no data to convert the mileage to hauling costs to estimate the impact in Region 9. Similarly, the relationships between bid premiums and the mileage to the nearest mill were not significant for Regions 1, 4 and 8, although they had expected negative signs. The impact estimates based on these results would not mean much on a statistical sense. Given the lack of alternative data to assess the FS receipt impacts from the SBA's proposal for regions for which estimated relationships between bid premium and the distance or hauling costs and were either not significant or had opposite signs, SBA's regulatory impact analysis is limited to Regions 5 and 6 only.

While SBA agrees with FS that every region is different, but because Regions 5 and 6 together account for nearly half (47%) of all set-aside sales and two-thirds (67%) of timber volume appraised to a large mill in all FS regions (excluding unaffected Region 3), the results based on these two regions provide fairly robust indications on the magnitude of impacts the proposed change might have across other regions, as well as the overall FS market.

With respect to benefits to small businesses from the proposed change, as shown in Table 9 (above), based on the historical data, about 65–70 firms (68 to be exact) would benefit from the SBA's proposal to appraise all set-aside timber sales to the nearest small mill. This figure is likely to be higher because some previous set-aside sales that received no bids from small businesses and were subsequently re-offered as full and open sales may become economically attractive for small businesses to bid when they are appraised to the nearest small mill. The SBA's proposal would benefit small businesses by lowering costs in hauling the set-aside timber purchases to the nearest mill

SBA believes that these positive impacts to small businesses justify some losses to FS receipts (0.9% in Region 6 and 2.4% in Region 5) under the proposed change. SBA notes that it did not evaluate the impacts reductions in receipts may have on the Forest Service's forest management and restoration goals or on payments made to counties for schools, roads, community wildfire protection planning or other purposes as authorized.

The main purpose of the SBA's proposal to appraise the set-aside sale to the nearest small business mill is to more accurately reflect the hauling cost to eligible small business bidders. Based on the historical data, up to 65–70 small business bidders will benefit from this proposed change. As discussed above, SBA expects more small businesses to participate in the timber set-aside program under the proposed change as some small firms that do not bid for set-aside sales appraised to a large business mill currently may decide to participate. SBA believes that the number of set-aside sales that receive no bid from small businesses and become full and open sales will decrease, thereby increasing the number of sales to small businesses. These all will help small businesses keep their business economically viable and to support or create jobs in their communities. Small business employees receive and spend wages within the communities and taxes they pay to local and state governments. These effects, although difficult to quantify, will further offset the impacts of decreases in flows of money to trust funds due to declines in FS timber receipts.

Overall, the proposed change to appraise the small business set-aside timber sales to the nearest small mill is consistent with SBA's statutory mandate to assist small businesses.

Impacts of A Potential Policy Change Under Consideration To Include the Stewardship Sawtimber Volume in the Calculation of the Small Business "Fair Proportion" To Establish Small Business Set-Aside Sales Under the Timber Program

A possible regulatory action to include the stewardship sawtimber volume in the calculation of small business fair market share could provide transparency to the process of determining whether or not small businesses are receiving the statutorily mandated fair proportion of timber sale contracts offered by FS. It could provide a market share that would more accurately reflect the small business participation in the government owned timber market and provide the public with more accurate information on functioning of the market. However, at this time, based on the currently available data, SBA's analysis indicates this policy option could have disparate impacts to small timber businesses both within and across regions. Based on the data and cross-tabulations provided by the FS, stewardship sales account for approximately one-third of total timber sold by the FS. As shown in Table 4 (earlier), the FS analysis suggests that, compared to timber program volumes, small businesses acquired a larger percentage of stewardship timber volume in Regions 2, 4, 8 and 9, where stewardship volumes are quite minimal relative to total timber volumes sold. However, small businesses received a lower percentage of stewardship timber sales in Regions 1, 5, and 6 where stewardship sales are generally fairly large relative to total sales. As discussed above, when all regions are combined, the small business share was substantially lower at about 62% under stewardship contracting, as compared to nearly 72% under the timber program.

In addition, in considering the possibility of including the stewardship sawtimber volume in the calculation of small business fair proportion used for determining small business set-aside sales within the timber program market, SBA also re-computed the latest five-year small business market share used to trigger a small business set aside sale by including the stewardship sawtimber volume. (Every five years base small business market shares are re-computed by including the timber sales data for the previous five years and remain valid until the next re-computation.) The re-computation results are shown in Table 11. As can be seen from the table, the inclusion of the stewardship sawtimber in calculation would result in an increase to the recomputed small market share in eight (12) market areas, a decrease in eleven (14) market areas, and no change in the remaining 113 market areas. The increase in the small business share would range from 1% to 39% and decrease from −1% to −22%. If the recent trend continues, it is possible that with the inclusion of the stewardship sawtimber volume the future small business market shares could be lower or higher in those or more market areas.

Region 10 (Alaska) has an agreement with SBA that small businesses will have a market share of at least 50%. The current market share was determined, via the 5-year re-computation process in agreement with SBA, to be 50% of the planned sale volume for the Region. Over the previous five-year period 100% of both timber and stewardship sales went to small businesses in Region 10. As shown in Table 11, with the inclusion of the stewardship timber volume, an 80% market share would be achievable in Region 10. The Region would have to consult with interested parties, provide notice, and revise the existing agreement with SBA to allow for inclusion of 80% of the Region's planned sale volume in the market (see FSH 2409.18, 91.21.). All re-computed shares reflect the limitations on share movement for the five-year period, except Regions 8 & 9 which do not have limitations on share movement. All shares are limited in movement to no lower than one-half the original base share. Eighty percent is the maximum small business share utilized on any market area, meaning that at least 20% of timber sales have to go to large businesses.

TABLE 11—FIVE-YEAR SMALL BUSINESS MARKET SHARE COMPARISONS 2010–2015, IMPACTED MARKET AREAS WITH AND WITHOUT STEWARDSHIP TIMBER

Region	Market area	Current five year share (%)	Recomputed share (most recent years) (%)	Recomputed share stewardship included (%)	Change in market share if stewardship included		
					No change (%)	Increase (%)	Decrease (%)
1	Beaverhead-Deerlodge	49	41	41	0		
	Bitterroot	80	80	80	0		
	Clearwater	74	80	67			−13
	Custer	62	62	56			−6
	Flathead	60	64	63			−1
	Gallatin	44	34	34	0		
	Helena	56	50	50	0		
	Kootenai	55	60	60	0		
	Lewis and Clark	56	50	50	0		
	Lolo	56	62	62	0		
	Nez Perce	40	31	30			−1
	Coeur D Alene	14	13	13	0		
	Kaniksu	13	14	12			−2
	St. Joe	51	46	46	0		
2	Arapaho Roosevelt	80	80	80	0		
	Bighorn	72	65	65	0		
	Black Hills	80	80	80	0		
	GM UNC GUNN	80	80	80	0		
	Medicine Bow	80	80	80	0		
	Pike San Isabel	80	80	80	0		
	Rio Grande	80	80	80	0		
	Routt	80	80	80	0		
	San Juan	80	72	80		8	
	Shoshone*	29	31	31	0		
	White River	80	80	80	0		
3	Apache	80	80	80	0		
	Carson	80	80	80	0		
	Cibola	73	80	80	0		
	Coconino	80	80	80	0		
	Coronado**	71	71	71	0		
	Gila	55	61	61	0		
	Kaibab North	56	62	62	0		
	Kaibab South	80	80	80	0		
	Lincoln	80	80	80	0		
	Prescott	80	80	80	0		
	Santa Fe	56	62	62	0		
	Sitgreaves	80	80	80	0		
	Tonto	70	77	77	0		
4	Ashley	80	80	80	0		

TABLE 11—FIVE-YEAR SMALL BUSINESS MARKET SHARE COMPARISONS 2010–2015, IMPACTED MARKET AREAS WITH AND WITHOUT STEWARDSHIP TIMBER—Continued

Region	Market area	Current five year share (%)	Recomputed share (most recent years) (%)	Recomputed share stewardship included (%)	Change in market share if stewardship included		
					No change (%)	Increase (%)	Decrease (%)
	Boise	55	61	58			−3
	Bridger Teton	56	62	62	0		
	Caribou	80	80	80	0		
	Dixie	80	80	80	0		
	Fishlake	80	80	80	0		
	Manti La Sal	80	80	80	0		
	Payette	63	69	67			−2
	Salmon Challis	72	79	79	0		
	Sawtooth	63	69	69	0		
	Targhee **	57	57	57	0		
	Toiyabe **	58	58	58	0		
	Uinta	80	80	80	0		
	Wasatch Cache	80	80	80	0		
5	Eldorado	60	54	54	0		
	Inyo **	66	66	66	0		
	Klamath	49	39	42		3	
	Lassen	29	39	39	0		
	Mendocino	48	38	48		10	
	Modoc	80	72	72	0		
	Plumas	20	18	18	0		
	Sequoia	80	80	80	0		
	Shasta	30	30	31		1	
	Trinity	67	74	74	0		
	Sierra	80	80	80	0		
	Gasquet	80	80	80	0		
	Six Rivers Other	67	60	60	0		
	Stanislaus	20	10	10	0		
	Tahoe	22	20	20	0		
6	Colville	70	77	77	0		
	Deschutes	23	33	33	0		
	Fremont Klamath	34	44	24			−20
	Gifford Pinchot North	62	60	64		4	
	Gifford Pinchot South	72	79	79	0		
	Malheur	80	80	80	0		
	Mt Hood	80	72	72	0		
	Ochoco Prineville	67	69	71		2	
	Okanogan	51	46	46	0		
	Puget Sound	57	51	51	0		
	Rogue River	34	31	31	0		
	Siskiyou East	55	49	49	0		
	Siskiyou West	80	73	73	0		
	Siuslaw	40	50	50	0		
	Umatilla North	47	37	37	0		
	Umatilla South	56	62	62	0		
	Umpqua North	63	69	69	0		
	Umpqua South	45	40	40	0		
	Wallowa Whitman	59	53	53	0		
	Wenatchee	45	55	55	0		
	Willamette Middle	72	79	79	0		
	Willamette North	71	78	78	0		
	Willamette South	80	79	79	0		
	Winema	40	31	31	0		
8	Alabama North	80	80	80	0		
	Alabama South	80	80	80	0		
	Andrew Pickens	77	65	43			−22
	Bienville	80	80	80	0		
	Chattahoochee	74	63	66		3	
	Croatan	80	80	80	0		
	Davy Crockett	80	25	64		39	
	Delta	80	80	80	0		
	Desoto	64	68	71			
	Enoree	59	57	55			−2
	Florida Forests	79	80	80	0		
	Francis Marion *	26	39	39	0		
	George Washington	80	80	80	0		
	Holly Springs	80	80	80	0		
	Homochitto	80	80	80	0		
	Jefferson *	80	61	61	0		
	Kisatchie	40	41	38			−3
	Kentucky North	80	80	80	0		
	Kentucky South	80	80	80	0		
	Land Between the Lakes	80	80	80	0		
	Long Cane	80	80	80	0		
	Nantahala	80	80	80	0		
	Oconee	80	80	80	0		
	Ouachita	62	47	43			−4

TABLE 11—FIVE-YEAR SMALL BUSINESS MARKET SHARE COMPARISONS 2010–2015, IMPACTED MARKET AREAS WITH AND WITHOUT STEWARDSHIP TIMBER—Continued

Region	Market area	Current five year share (%)	Recomputed share (most recent years) (%)	Recomputed share stewardship included (%)	Change in market share if stewardship included		
					No change (%)	Increase (%)	Decrease (%)
	Ozark	65	69	70		1	
	Pisgah	80	80	80	0		
	Sam Houston	80	80	80	0		
	Saint Francis	80	80	80	0		
	Tennessee North	80	80	80	0		
	Tennessee South	71	80	80	0		
	Tombigbee	80	80	80	0		
	Texas East Side	49	27	47		20	
	Uwharrie	80	80	80	0		
9	Alleghany	80	80	80	0		
	Chequamegon	80	80	80	0		
	Chippewa	80	80	80	0		
	Green Mountain	80	80	80	0		
	Hiawatha	80	80	80	0		
	Huron Manistee	80	80	80	0		
	Mark Twain	80	80	80	0		
	Monongahela	66	76	55			−21
	Nicolet	80	80	80	0		
	Ottawa	80	80	80	0		
	Shawnee	37	80	80	0		
	Superior	75	69	68			−1
	Wayne Hoosier	77	80	80	0		
	White Mountain	80	80	80	0		
10	Tongass	50	50	80		30	

* Indicates market areas with no stewardship sales and ** denotes market areas with no SBA's timber program or stewardship sales.
Region 7 was eliminated in 1965 as part of re-designation of FS regions.
The table doesn't include the Chugach Market Area in Region 10 (Alaska).

The FS econometric results showed a significant positive relationship between stewardship sales and bid premiums in Regions 5 and 6, a significant negative relationship in Region 3, and those relationships were not significant in other regions. Based on these results, FS argued that in Regions 5 and 6 where bid premiums are significantly higher for stewardship sales than for timber program sales, stewardship contracting will have a positive impact on retained receipts, land management activities and receipts to the treasury. Similarly, in Region 3 where the results showed a significant negative relationship between stewardship sales and bid premiums, FS believed that stewardship contracting will have a negative impact on retained receipts, land management activities and receipts to the treasury. Since SBA is not currently considering to subject stewardship contracts to set-aside sales for small business nor to reduce stewardship contracting as a result of any change in the small business market share by including the stewardship sawtimber in the calculation, SBA expects very little or no impact on FS receipts because of this possible change under consideration. The current analysis indicates including the stewardship sawtimber volume could either benefit small businesses by triggering additional set-aside sales within the timber program when the overall small business market share falls below the certain level or could lead to fewer small business set-aside sales than under the current policy of calculating fair proportion based only on the timber program volume. Due to the lack of data, it is difficult to estimate the number of additional or reduced set-aside sales that would be triggered or disappear, or the number of small businesses that would benefit or be harmed from this possible policy change.

In its response to the ANPRM questions and impacts of the SBA's proposed changes, FS noted that although historical shares of timber awarded to small businesses under the timber sales program and total sales including stewardship sales are similar, this could change if stewardship sales increase significantly as a proportion of total timber sales. Independent of small business impacts, the inclusion of the stewardship sawtimber, which accounts for one-third of the total timber sales, could provide a more accurate representation of what proportion of FS timber is acquired by small businesses. This could not only provide more transparency of the FS timber program, but also more accurate assessment of if small businesses are getting a statutorily mandated fair proportion of Government timber sales.

3. What are the alternatives to this proposed rule?

Besides the proposal to change the appraisal of the hauling costs on set-aside timber sales, SBA is also requesting comment on various alternatives to this proposal, as discussed in this proposed rule. SBA invites comments on these alternatives as well as suggestions for other alternatives to this proposed change.

Regarding appraising haul costs for set-aside sales, SBA considered imposing haul cost adjustments for non-manufacturers. Because both manufacturers and non-manufacturers must agree to manufacture at least 70% of the sawtimber purchased through a set-aside sale at a small mill, SBA does not believe additional adjustments for non-manufacturers are warranted.

SBA also considered waiving the 30/70 rule if no small mills are located within a reasonable distance of a set-aside sale. Such an alternative would allow small businesses to participate in the set-aside timber sales without requiring them to look for and use small mills. Although this approach would not increase hauling costs (and hence decrease receipts to the FS), since small businesses would not have to seek out and use small mills located further away, it could lead to inconsistent results. What might not be considered a "reasonable distance" for one sale might be so considered for another.

Instead of appraising 100% of the hauling to the nearest small business mill, SBA also considered appraising, when the nearest mill is a large business, 70% of the haul costs to the nearest small mill and 30% of the haul costs to the nearest large mill. The FS also suggested this as an alternative to SBA's proposal to avoid overstating the haul costs when the purchaser sells 30% of the sawtimber to the nearest largest mill. This alternative may accurately reflect the true costs to haul the timber if every winning bidder always sells 30% of sawtimber to the nearest large mill and 70% to the nearest small mill. However, SBA's reviews of all set-aside sales as well as those appraised to the nearest large mill do not support this. Majority of small manufacturers that purchase timber under the FS set-aside sales either use 100% of the purchase themselves or sell 100% to another small mill. More importantly, even a large proportion of non-manufacturer purchasers (*i.e.*, loggers) also sell 100% of set-aside to the nearest mill. For example, of 156 set-aside sales that were appraised to the nearest large mill during FY 2009–2014, 95 were acquired by small non-manufacturers of which 38 (or 40%) sold 100% of timber to a small mill. Unless the FS is certain that the purchaser is going to sell 30% of sawtimber to the nearest large mill and 70% to the nearest small mill, the application of the 30/70 appraisal alternative will always lead to understatement of the hauling costs to the eligible bidders. This approach will also be complicated to implement.

SBA also considered appraising to the nearest small mill only when that mill is located no more than 60 miles from the large mill which would be used as the appraisal point under the current rules. Data suggests that 62 miles is the median distance between a small mill and the large mill NFS used to appraise the historical set-aside sales (see Table 10, above). Historical sales data suggests that appraising to the nearest small mill only when that mill is located no more than 60 miles from the current appraisal point would affect 2.7% of set-aside sales and benefit approximately 35 small businesses annually (see Table 12). The estimated revenue losses to NFS will be reduced to about $0.53 million (or 0.4% of total) in Region 6 and $0.15 million (0.4% of total) in Region 5 if the appraisal is done to the nearest mill that is within 60 miles.

TABLE 12—COUNT OF SALES AND AVERAGE NUMBER OF BIDDERS PARTICIPATING IN SET-ASIDE SALES WHERE A SMALL MILL (SM) IS LOCATED WITHIN SIXTY MILES OF THE LARGE MILL APPRAISAL POINT (AP), FY 2009–2015

FS region *	Total count of sales included	Set-asides appraised to a large mill		
		Count of sales where a SM is <60 miles from AP	Share of total sales (%)	Average historical participation/number of bidders affected
1	159	8	5.0	2.3
2	256	0	0.0	0
3	42	0	0.0	0
4	112	1	0.9	0.7
5	195	6	3.1	1.8
6	397	18	4.5	7.2
8	858	20	2.3	7.7
9	897	24	2.7	15.3
Total	2,916	77	2.6	35.0

* Region 7 was eliminated in 1965 as part of re-designation of FS regions and Region 10 was not included in the FS appraisal data.
Source: FS appraisal data and SBA calculations.

SBA did not propose this approach in the proposed regulatory text as the required step of determining whether a small mill is located within 60 miles of the nearest large mill could unnecessarily complicate the process. This approach would impact fewer set-aside sales, but it would also benefit fewer small businesses. Overall, the proposed change to appraise the hauling costs for the set-aside timber sales to the nearest small mill is consistent with SBA's statutory mandate to assist small businesses.

With respect to a potential policy amendment to include the stewardship sawtimber volume in the small business market share calculation, SBA considered including stewardship sawtimber only in those market areas where small businesses are particularly likely to be underrepresented if the stewardship sawtimber volume is excluded. Specifically, SBA is considering including the stewardship sawtimber volume only in market areas where small businesses purchase a large percentage of stewardship timber volume or where the stewardship timber volume represents a high percentage of Overall timber volume. However, the purpose of such a possible regulatory amendment is to more transparently and accurately reflect small business participation for purposes of calculating small business market share for set-aside triggers. SBA believes that it is necessary for fairness across the country to have a consistent policy that is not subject to interpretation. While SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. The historical data shows that the inclusion of IRTC and IRSC stewardship sawtimber volume could have a substantial negative or positive impact in the computation of small business market share in many of the 139 active market areas. SBA invites comments and data on how such a policy change would impact small businesses, the stumpage prices, number of set-aside sales, and FS receipts. SBA also welcomes comments on any potential impacts of reduced receipts to county payment programs or other areas affecting small business economic development.

Executive Order 13563

SBA has conducted significant outreach to the affected public for many years. Between 1996 and 2002, SBA visited a number of small mills throughout the country to discuss the impact of stewardship contracting on the timber program and their ongoing operations. During this time period, SBA was also contacted by a small business timber association regarding the impact of stewardship contracting on small mills located in Western states. During the 2000 and 2005 re-computations, SBA and FS discussed the impacts of the stewardship program on small business market shares and the possibility of including the stewardship sawtimber volume in the five-year re-computation of the small business fair proportion. In 2006, FS issued a proposed policy directive to include stewardship contracting sawtimber volume in the calculation of small business market shares. At the 2010 re-computation, SBA and FS again discussed the topic of including stewardship sawtimber volume in the calculation. SBA continued to meet with small mills regarding the impact of stewardship contracting between 2005 and 2012. In 2010, SBA held a "town hall meeting" with small mills to discuss the impacts of stewardship contracting. In 2012, small business timber groups submitted complaints to SBA's Ombudsman and Office of Advocacy regarding FS' failure to finalize the proposed policy directive to include stewardship sawtimber volume in the small business market share calculations. In 2013, SBA began discussions with FS regarding the current proposed rulemaking which resulted in the 2014 publication of the ANPRM. SBA received 842 comments in response to the ANPRM. During the comment review process, SBA again met with industry stakeholders regarding ongoing impacts of stewardship contracting and the current method of appraising small business set-aside sales.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in sections 3(a) and 3(b)(2) of that Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that this proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this proposed rule would not impose new reporting requirements. Stewardship sales will be tracked and recorded using the same method currently set forth in the Forest Service Manual (FSM 2400)—Commercial Timber Sales Manual (FSM 2430) and the Forest Service Handbook (FSH)—Timber Sale Preparation Handbook (FSH 2409.18). FS does not currently make any collections related to tracking this data and no additional information will be collected. The difference would be that the stewardship sawtimber volume would be included in the calculation. The appraisal point calculation performed by the FS will also be conducted using the same methodology with the exception of the mill location used in set-aside sales.

Regulatory Flexibility Act, 5 U.S.C. 601–612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. In accordance with this requirement, SBA has prepared this Initial Regulatory Flexibility Analysis addressing the impact of this proposed rule and alternatives, including a possible policy change under consideration.

1. What is the need for and objective of this proposed rule?

The proposal to appraise set-aside haul costs to the nearest small mill is necessary to accurately reflect the costs to eligible bidders.

2. What is the legal basis for this proposed rule?

Section 2(a) of the Small Business Act (15 U.S.C. 631(a)) provides that it is the declared policy of the Congress that the Government should aid, counsel, assist, and protect the interests of small business concerns in order to ensure that a fair proportion of the total sales of Government property be made to such enterprises. Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) further provides that small business concerns shall receive any contract for the sale of Government property where it is in the interest of ensuring that a fair proportion of the total sales of Government property be made to small business concerns.

3. What is SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates there are approximately 362 small business firms that may benefit from this rule. SBA estimates these firms will benefit to the extent small business timber sale set-aside bid prices are calculated using the actual hauling costs the bidders will incur. Approximately 5.3% of sales would be impacted, benefiting 65–70 small businesses. No large business would be impacted as they are not eligible to participate in small business set-aside timber sales.

4. What are the projected reporting, recordkeeping, Paperwork Reduction Act, and other compliance requirements?

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements. Stewardship sales will be tracked and recorded using the same method currently set forth in the Forest Service Manual (FSM 2400)—Commercial Timber Sales Manual (FSM 2430) and the Forest Service Handbook (FSH)—Timber Sale Preparation Handbook (FSH 2409.18). FS does not currently make any collections related to tracking this data and no additional information will be collected. The appraisal point calculation performed by the FS will be conducted using the same methodology with the exception of the mill location used in set-aside sales.

5. What relevant federal rules may duplicate, overlap, or conflict with this rule?

We are not aware of any rules that duplicate, overlap or conflict with this rule. The FS Timber Sale Preparation Handbook would conflict with the proposed rule, if adopted as proposed. Concomitant with the SBA's rule, the FS would revise its directives, including FSH 2409.18.

6. What significant alternatives did SBA consider that accomplish the stated objectives and minimize significant economic impact on small entities?

Regarding appraising haul costs, SBA considered imposing haul cost adjustments for non-manufacturers. Because both manufacturers and non-manufacturers must agree to manufacture at least 70% of the sawtimber purchased through a set-aside sale at a small mill, SBA does not believe additional adjustments for non-manufacturers are warranted. SBA also considered waiving the 30/70 rule if no small mills are located within a reasonable distance of the sale. Such an alternative would allow small businesses to participate in set-aside timber sales without requiring them to look for and use small mills. Although this approach would not increase hauling costs (and hence not increase the cost to the Government), since small businesses would not have to seek out and use small mills located further away, it could lead to inconsistent results. What might not be considered a "reasonable distance" for one sale might be so considered for another sale. Moreover, without specific data as to what hauling distance leads to a sales price that is not fair and reasonable to the Government, this approach could be challenged as being arbitrary.

In addition, with respect to the 30/70 rule, instead of appraising 100% of the hauling to the nearest small mill, SBA also considered appraising, when the nearest mill is a large business, 70% of the haul costs to small mills and 30% of the haul costs to large mills. Although this approach may accurately reflect the true costs to haul the timber, SBA felt that it could unnecessarily complicate the process.

SBA also considered appraising to the nearest small mill only when that mill is located no more than 60 miles from the large mill which would be used as the appraisal point under the current rules. The median distance between a small mill and the large mill FS used to appraise historical set-aside sales is about 62 miles (see Table 10). Historical sales data suggests that appraising to the nearest small mill only when that mill is located no more than 60 miles from the current appraisal point would affect 2.7% of set-aside sales and benefit approximately 35 small businesses annually (see Table 10). SBA did not adopt this approach in the proposed regulatory text as the required step of determining whether a small mill is located within 60 miles of the nearest large mill could unnecessarily complicate the process. This approach would impact fewer set-aside sales, but it would also benefit fewer small businesses. Overall, the proposed change tis consistent with SBA's statutory mandate to assist small businesses.

As an alternative to a potential policy change, although not included in this proposed rule, to include the stewardship sawtimber volume in the small business market share calculation, SBA also is also considering to include the stewardship sawtimber volume in that calculation only in those market areas where small business participation is particularly likely to be underrepresented if stewardship sawtimber volume is excluded. Specifically, SBA is considering whether to include the stewardship sawtimber volume only in market areas where small businesses purchase a large percentage of stewardship contracting timber volume or where stewardship contracting timber volume represents a high percentage of overall timber volume. However, the purpose of such a regulatory amendment is to more accurately reflect small business participation rates for purposes of calculating the set-aside trigger point.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. Amend § 121.506 by redesignating paragraphs (a) through (e), as paragraphs (b) through (f) respectively, adding new paragraph (a), and adding paragraphs (g), and (h).

The additions read as follows:

§ 121.506 What definitions are important for sales or leases of Government-owned timber?

(a) *Computation of market share* is the small business market share, expressed as a percentage for a small business timber sale market area based on the purchase by small business in the timber sale program market over the preceding 5-year period. The computation is done every five years by the U.S. Forest Service in collaboration with the SBA.

* * * * *

(g) *Small business market share* is the calculated share of sawtimber that small businesses are expected to purchase within a market area, expressed as a whole percent.

(h) *Small business timber sale market areas* are physical locations throughout the United States including National Forests used in the administration of the Timber Sale Set-Aside program.

■ 3. Amend § 121.507 by adding paragraph (d) to read as follows:

§ 121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?

* * * * *

(d) In setting minimum bids for small business timber sale set-asides, the appraisal point to calculate the cost of transportation and hauling shall be the nearest small business manufacturing facility where the raw materials may be legally processed as determined by the U.S. Forest Service.

Dated: September 14, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–22861 Filed 9–26–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8839; Airspace Docket No. 16–AGL–19]

Proposed Amendment of Class E Airspace for the Following Ohio Towns; Findlay, OH; Ashland, OH; Celina, OH; Circleville, OH; Columbus, OH; Defiance, OH; Hamilton, OH; Lima, OH; and London, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace designated as a surface area at Findlay Airport, Findlay, OH; and Class E airspace extending upward from 700 feet above the surface at Ashland County Airport, Ashland, OH; Lakefield Airport, Celina, OH; Pickaway County Memorial Airport, Circleville, OH; Ross County Airport, Chillicothe, OH; Fairfield County Airport, Lancaster, OH; Defiance Memorial Airport, Defiance, OH; Findlay Airport; Bluffton Airport, Findlay, OH; Butler County Airport-Hogan Field, Hamilton, OH; Lima Allen County Airport, Lima, OH; and Madison County Airport, London, OH. Decommissioning of non-directional radio beacon (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at these airports. Additionally, the geographic coordinates at Port Columbus International Airport; Findlay Airport; Ashland County Airport; Samaritan Hospital Heliport, Ashland, OH; Lakefield Airport; Ross County Airport; Defiance Regional Medical Center Heliport, Defiance, OH; Bluffton Airport; Lima Allen County Airport; and

St. Rita's Medical Center Heliport, Lima, OH, would be adjusted to coincide with the FAA's aeronautical database. Also, the names of Samaritan Hospital Heliport (formerly Samaritian Regional Health System), Defiance Regional Medical Center Heliport (formerly Defiance Hospital), and Butler County Regional Airport-Hogan Field (formerly Butler County Regional Airport) would be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before November 14, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or 1–800–647–5527. You must identify FAA Docket No. FAA–2016–8839; Airspace Docket No. 16–AGL–19, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace designated as a surface area at Findlay Airport, Findlay, OH; and Class E airspace extending upward from 700 feet above the surface at Ashland County Airport, Ashland, OH; Lakefield Airport, Celina, OH; Pickaway County Memorial Airport, Circleville, OH; Ross County Airport, Chillicothe, OH; Fairfield County Airport, Lancaster, OH; Defiance Memorial Airport, Defiance, OH; Findlay Airport; Bluffton Airport, Findlay, OH; Butler County Airport-Hogan Field, Hamilton, OH; Lima Allen County Airport, Lima, OH; and Madison County Airport, London, OH.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–8839/Airspace Docket No. 16–AGL–19." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying:

Class E airspace designated as a surface area at Findlay Airport, Findlay, OH, by removing the segments extending from the 4.3-mile radius 7.4 miles south and northeast of the airport, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And Class E airspace extending upward from 700 feet above the surface:

By updating the geographic coordinates of Ashland County Airport and noting the name change of Samaritan Hospital Heliport (formerly Samaritian Regional Health System), Ashland, OH, to coincide with the FAA's aeronautical database;

Within a 6.4-mile radius (reduced from a 7-mile radius) of Lakefield Airport, Celina, OH, and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

Within a 6.4-mile radius (reduced from a 10-mile radius) of Pickaway County Memorial Airport, Circleville, OH, with an extension from the 6.4-mile radius to 10.5 miles north of the airport, and within a 6.5-mile radius (reduced from a 9.1-mile radius) of Ross County Airport, Chillicothe, OH, and updating the geographic coordinates of the Ross County Airport to coincide with the FAA's aeronautical database;

By updating the geographic coordinates of Port Columbus International Airport, Columbus, OH, removing the Don Scott NDB from the boundary description, and within a 7.0-mile radius (increased from a 6.4-mile radius) of Fairfield County Airport, Lancaster, OH; Within a 6.4-mile radius (reduced from a 7-mile radius) of Defiance Memorial Airport, Defiance, OH, and updating the geographic coordinates and name of Defiance Regional Medical Center Heliport (formerly Defiance Hospital), Defiance, OH, to coincide with the FAA's aeronautical database;

Within a 6.8-mile radius (reduced from a 7.4-mile radius) of Findlay Airport, Findlay, OH, and within a 7.2-mile radius (increased from a 6.6-mile radius) of Bluffton Airport, Findlay, OH, and updating the geographic coordinates of these airports to coincide with the FAA's aeronautical database;

Within a 6.9-mile radius (increased from a 6.6-mile radius) of Butler County Regional Airport-Hogan Field, Hamilton, OH, and updating the name of the airport (formerly Butler County Regional Airport) to coincide with the FAA's aeronautical database;

By removing the Allen County VOR from the boundary description of Lima Allen County Airport, Lima, OH, and updating the name of St. Rita's Medical Center Heliport (formerly Saint Rita's Medical Center), Lima, OH, and updating the geographic and point in space coordinates of these airports to coincide with the FAA's aeronautical database;

And by removing the segment extending from the 6.4-mile radius 7.4 miles west of Madison County Airport, London, OH.

Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV procedures at these airports. Controlled airspace is necessary for the safety and management of standard instrument approach procedures for IFR operations at the airports.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AGL OH E2 Findlay, OH [Amended]

Findlay Airport, OH
(Lat. 41°00′43″ N., long. 83°40′07″ W.)
Lutz Airport
(Lat. 40°57′42″ N., long. 83°35′43″ W.)

Within a 4.3-mile radius of the Findlay Airport excluding that portion within a 1-mile radius of the Lutz Airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL OH E5 Ashland, OH [Amended]

Ashland County Airport, OH
(Lat. 40°54′11″ N., long. 82°15′20″ W.)
Samaritan Hospital Heliport, OH, Point in Space Coordinates
(Lat. 40°51′34″ N., long. 82°18′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Ashland County Airport, and within a 6-mile radius of the Point in Space serving Samaritan Hospital Heliport, excluding that airspace which lies within the Mansfield, OH, Class E airspace area.

* * * * *

AGL OH E5 Celina, OH [Amended]

Lakefield Airport, OH
(Lat. 40°29′03″ N., long. 84°33′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakefield Airport, excluding that airspace within the Wapakoneta, OH, Class E airspace area.

AGL OH E5 Circleville, OH [Amended]

Circleville, Pickaway County Memorial Airport, OH
(Lat. 39°30′58″ N., long. 82°58′56″ W.)
Chillicothe, Ross County Airport, OH
(Lat. 39°26′26″ N., long. 83°01′23″ W.)
Yellow Bud VOR
(Lat. 39°31′2637″ N., long. 82°58′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pickaway County Memorial Airport, and within 2.9 miles either side of the 345° radial from the Yellow Bud VOR extending from the 6.4-mile radius to 10.5 miles north of the airport, and within a 6.5-mile radius of the Ross County Airport, excluding that airspace within the Waverly, OH, Class E Airspace area.

* * * * *

AGL OH E5 Columbus, OH [Amended]

Columbus, Port Columbus International Airport, OH
(Lat. 39°59′49″ N., long. 82°53′32″ W.)
Columbus, Rickenbacker International Airport, OH
(Lat. 39°48′50″ N., long. 82°55′40″ W.)
Columbus, Ohio State University Airport, OH
(Lat. 40°04′47″ N., long. 83°04′23″ W.)
Columbus, Bolton Field Airport, OH
(Lat. 39°54′04″ N., long. 83°08′13″ W.)
Columbus, Darby Dan Airport, OH
(Lat. 39°56′31″ N., long. 83°12′18″ W.)
Lancaster, Fairfield County Airport, OH
(Lat. 39°45′20″ N., long. 82°39′26″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Port Columbus International Airport, and within 3.3 miles either side of the 094° bearing from Port Columbus International Airport extending from the 7-mile radius to 12.1 miles east of the airport, and within a 7-mile radius of Rickenbacker International Airport, and within 4 miles either side of the 045° bearing from Rickenbacker International Airport extending from the 7-mile radius to

12.5 miles northeast of the airport, and within a 6.5-mile radius of Ohio State University Airport, and within a 7.4-mile radius of Bolton Field Airport, and within a 7-mile radius of Fairfield County Airport, and within a 6.5-mile radius of Darby Dan Airport, excluding that airspace within the London, OH, Class E airspace area.

* * * * *

AGL OH E5 Defiance, OH [Amended]

Defiance Memorial Airport, OH
(Lat. 41°20′15″ N., long. 84°25′44″ W.)
Defiance Regional Medical Center Heliport, OH, Point in Space Coordinates
(Lat. 41°17′53″ N., long. 84°22′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Defiance Memorial Airport, and within a 6-mile radius of the Point in Space serving Defiance Regional Medical Center Heliport.

* * * * *

AGL OH E5 Findlay, OH [Amended]

Findlay Airport, OH
(Lat. 41°00′43″ N., long. 83°40′07″ W.)
Bluffton Airport, OH
(Lat. 40°53′08″ N., long. 83°52′07″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Findlay Airport and within a 7.2-mile radius of Bluffton Airport.

* * * * *

AGL OH E5 Hamilton, OH [Amended]

Butler County Regional Airport-Hogan Field, OH
(Lat. 39°21′50″ N., long. 84°31′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Butler County Regional Airport-Hogan Field.

* * * * *

AGL OH E5 Lima, OH [Amended]

Lima Allen County Airport, OH
(Lat. 40°42′27″ N., long. 84°01′37″ W.)
St. Rita's Medical Center Heliport, OH, Point in Space Coordinates
(Lat. 40°44′26″ N., long. 84°07′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Lima Allen County Airport, and within a 6-mile radius of the Point in Space serving St. Rita's Medical Center Heliport, excluding the airspace within the Findlay, OH, Class E airspace area.

AGL OH E5 London, OH [Amended]

Madison County Airport, OH
(Lat. 39°55′58″ N., long. 83°27′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Madison County Airport.

Issued in Fort Worth, Texas, on September 19, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–23113 Filed 9–26–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–448]

Schedules of Controlled Substances: Temporary Placement of Furanyl Fentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to temporarily schedule the synthetic opioid, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-2-carboxamide (furanyl fentanyl), into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act. This action is based on a finding by the Administrator that the placement of this synthetic opioid into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, possession, importation, exportation, research, and conduct of, instructional activities of this synthetic opioid.

DATES: September 27, 2016.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Any final order will be published in the **Federal Register** and may not be effective prior to October 27, 2016.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if she finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into schedule I of the CSA.[1] The

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[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

Administrator transmitted notice of his intent to place furanyl fentanyl in schedule I on a temporary basis to the Assistant Secretary by letter dated June 22, 2016. The Assistant Secretary responded to this notice by letter dated July 8, 2016, and advised that based on review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for furanyl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of furanyl fentanyl into schedule I of the CSA. Furanyl fentanyl is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for furanyl fentanyl under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of furanyl fentanyl in schedule I on a temporary basis is necessary to avoid an imminent hazard to public safety.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Furanyl Fentanyl

Furanyl fentanyl was first described in 1986 in the patent literature. The scientific literature reported overdose events involving furanyl fentanyl, among other fentanyl analogues in 2015 in Sweden. No approved medical use has been identified for furanyl fentanyl, nor has it been approved by the FDA for human consumption. The recent identification of furanyl fentanyl in drug evidence and the identification of this substance in association with fatal overdose events indicate that this substance is being abused for its morphine-like properties.

Available data and information for furanyl fentanyl, summarized below, indicate that this synthetic opioid has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis is available in its entirety under the public docket of this action as a supporting document at *www.regulations.gov* under Docket Number DEA–448.

Factor 4. History and Current Pattern of Abuse

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS; data from STRIDE and STARLiMS were queried on July 11, 2016. STARLiMS registered 36 reports containing furanyl fentanyl, all reported in 2016, from California, Connecticut, Florida, Georgia, Maryland, Montana, New Jersey, New York, North Carolina, North Dakota, Tennessee, Utah, West Virginia, and the District of Columbia. The DEA is not aware of any laboratory identifications of furanyl fentanyl prior to 2015.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by other federal, state and local forensic laboratories across the country. According to NFLIS, the first report of furanyl fentanyl at other federal, state, or local forensic laboratories was recorded in January 2016 in Ohio. From January through May 2016, a total of 80 submissions involving furanyl fentanyl were reported in NFLIS as a result of law enforcement encounters in Iowa, New Jersey, North Dakota, Ohio, and Wisconsin (query date: July 11, 2016).

Evidence suggests that the pattern of abuse of fentanyl analogues, including furanyl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of furanyl fentanyl have been encountered in powder form. Furanyl fentanyl has also been encountered in drug paraphernalia commonly associated with heroin or other opioid abuse including glassine bags, and as a residue on spoons and bottle caps. Furanyl fentanyl has been encountered as a single substance as well as in combination with other substances of abuse, including heroin, fentanyl, butyryl fentanyl, and U–47700. Furanyl fentanyl has caused fatal overdoses, in which intravenous routes of administration are documented.

Factor 5. Scope, Duration and Significance of Abuse

The DEA is currently aware of at least 128 confirmed fatalities associated with furanyl fentanyl. The information on these deaths occurring in 2015 and 2016 was collected from personal communications or toxicology and medical examiner reports received by the DEA. These deaths were reported from five states—Illinois (36), Maryland (41), New Jersey (1), North Carolina (49), and Ohio (1). STARLiMS and NFLIS have a total of 116 drug reports in which furanyl fentanyl was identified in drug exhibits submitted to forensic laboratories in 2016 from law enforcement encounters in California, Connecticut, Florida, Georgia, Iowa, Maryland, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee, Utah, West Virginia, Wisconsin, and the District of Columbia. It is likely that the prevalence of furanyl fentanyl in opioid analgesic-related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate this substance from fentanyl.

The population likely to abuse furanyl fentanyl overlaps with the population abusing prescription opioid analgesics and heroin. This is evidenced by the routes of drug administration and drug use history documented in furanyl fentanyl fatal overdose cases. Because abusers of furanyl fentanyl are likely to obtain this substance through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.* use an illicit drug for the first time) furanyl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

Factor 6. What, if Any, Risk There Is to the Public Health

Furanyl fentanyl exhibits pharmacological profiles similar to that of fentanyl and other μ-opioid receptor agonists. The toxic effects of furanyl fentanyl in humans are demonstrated by overdose fatalities involving this substance. Abusers of furanyl fentanyl may not know the origin, identity, or purity of this substance, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on the documented case reports of overdose fatalities, the abuse of furanyl fentanyl leads to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Furanyl fentanyl has been associated with numerous fatalities. At least 128 confirmed overdose deaths involving furanyl fentanyl abuse have been reported throughout Illinois (36), Maryland (41), New Jersey (1), North Carolina (49), and Ohio (1) between 2015 and 2016.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of furanyl fentanyl poses an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for furanyl fentanyl in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1) may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for furanyl fentanyl indicate that this substance has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated June 22, 2016, notified the Assistant Secretary of the DEA's intention to temporarily place this substance in schedule I.

Conclusion

This notice of intent initiates an expedited temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h). In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule furanyl fentanyl in schedule I of the CSA, and finds that placement of this synthetic opioid substance into schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds that it is necessary to temporarily place furanyl fentanyl into schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling this substance will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. Furanyl fentanyl will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession of a schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(21) to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(21) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylfuran-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: Furanyl fentanyl) . . . (9834).

Dated: September 15, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–23183 Filed 9–26–16; 8:45 am]

BILLING CODE 4410–09–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 212

Freedom of Information Act Regulations

AGENCY: Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: This regulation prescribes the procedures and standards USAID follows in processing requests for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. The Act requires agencies to review their FOIA regulations, and no later than 180 days after enactment, directed the head of each agency to issue regulations on various elements of its FOIA program.

DATES: Submit comments on or before November 25, 2016.

FOR FURTHER INFORMATION CONTACT: Lynn P. Winston, Bureau for Management, Office of Management Services, Information Records Division, U.S. Agency for International Development, Washington, DC 20523–6601; tel. 202–712–0960, fax: 202–216–3070.

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The Act addresses a range of procedural issues that affect agency FOIA regulations, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal, and that they provide dispute resolution services at various times throughout the FOIA process. The Act also, among other things, codifies the Department of Justice's "foreseeable harm" standard, amends Exemption 5, creates a new "Chief FOIA Officer Council," and adds two new elements to agency Annual FOIA Reports.

List of Subjects in 22 CFR Part 212

Freedom of information.

For the reasons stated in the preamble, USAID proposes to revise 22 CFR part 212 to read as follows:

PART 212—PUBLIC INFORMATION

Subpart A—General Provisions

212.1 Purpose and scope.
212.2 Policy.
212.3 Records available on the Agency's Web site.

Subpart B—Proactive Disclosures of Agency Records

212.4 Materials available for public inspection and copying.

Subpart C—Requirements for Making Requests

212.5 How to make a request for records.

Subpart D—Responsibility for Responding to Requests

212.6 Designation of authorized officials.
212.7 Processing of request.

Subpart E—Reasons for Withholding Some Records

212.8 General policy.
212.9 Exemption 1: National defense and foreign policy.
212.10 Exemption 2: Internal personnel rules and practices.
212.11 Exemption 3: Records exempted by other statutes.
212.12 Exemption 4: Trade secrets and confidential commercial or financial information.
212.13 Exemption 5: Internal memoranda.
212.14 Exemption 6: Clearly unwarranted invasion of personal privacy.
212.15 Exemption 7: Law enforcement.
212.16 Exemption 8: Records on financial institutions.
212.17 Exemption 9: Records concerning geological information.
212.18 Exclusions one through three.

Subpart F—Timing of Responses to Requests

212.19 Time limits.

Subpart G—Responses to Requests

212.20 Responsibility for responding to requests.

Subpart H—Confidential Commercial Information

212.21 Policy and procedures.

Subpart I—Administrative Appeals

212.22 Appeal procedures.
212.23 Mediation and dispute services.

Subpart J—Preservation of Records

212.24 Policy and procedures.

Subpart K—Fees

212.25 Fees to be charged—general.
212.26 Fees to be charged—requester categories.

Subpart L—Annual Reporting Requirements

212.27 Annual Report.
212.28 Chief FOIA Officer's Report.

Subpart M—FOIA Definitions

212.29 Glossary.

Subpart N—Other Rights and Services

212.30 Rights and services qualified by the FOIA statute.

Subpart O—Privacy Act Provisions

212.31 Purpose and scope.
212.32 Privacy definitions.
212.33 Request for access to records.
212.34 Request to amend or correct records.
212.35 Appeals from denials of PA amendment requests.
212.36 Request for accounting of record disclosures.
212.37 Specific exemptions.

Subpart A—General Provisions

§ 212.1 Purpose and scope.

This subpart contains the rules that the United States Agency of International Development (hereinafter "USAID" or "the Agency") follows in processing requests for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. The rules in this subpart should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, are processed under Subpart O. Definitions of FOIA terms are referenced in Subpart L. As a matter of policy, the Agency makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

§ 212.2 Policy.

(a) As a general policy, USAID follows a balanced approach in administering the FOIA. USAID recognizes the right of the public to access information in the possession of the Agency. USAID also recognizes the legitimate interests of organizations or persons who have submitted records to the Agency or who would otherwise be affected by release of records. USAID has no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. USAID's policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized under the FOIA.

(b) *Definitions.* For purposes of subparts A through K, M, and O of this part, *record* means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the Agency and under the control of the Agency at the time of the request, including information maintained for the Agency by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Agency's automated information systems.

§ 212.3 Records available on the Agency's Web site.

Information that is required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) is regularly updated by the Agency and found on its public Web site: *www.usaid.gov/foia-requests.* Records that are required by the FOIA to be made available for public inspection and copying under 5 U.S.C. 552(a)(2) also are available on the Agency's public Web site.

Subpart B—Proactive Disclosures of Agency Records

§ 212.4 Materials available for public inspection and copying.

(a) In accordance with this subpart, the Agency shall make the following materials available for public inspection and copying:

(1) Operational policy in USAID's Automated Directives System (ADS) which have been adopted by the Agency and are not published in the **Federal Register**;

(2) Administrative staff manuals and instructions to staff that affect any member of the public; and

(3) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request, and which have been requested three (3) or more times, or because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. The Agency shall decide on a case by case basis whether records fall into this category, based on the following factors:

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

Subpart C—Requirements for Making Requests

§ 212.5 How to make a request for records.

(a) *General information.* USAID has a centralized system for responding to FOIA requests. The Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) is the central processing point for requests for USAID records contained in Washington, DC, and its overseas missions. All FOIA requests must be submitted to this office. To make a request for the Agency's records, a requester may send request via one of the following mediums:

(1) *By Email: foia@usaid.gov.* Please include your mailing address, email address and phone number with your request. While our FOIA Specialists are happy to answer questions about the FOIA Program and/or help you formulate your request over the phone, please be advised that FOIA requests cannot accept by phone.

(2) *Online Portal:* To submit your request online, please click the subsequent link: *https://foiarequest.usaid.gov/index.aspx.*

(3) *By US Postal Mail:* United States Agency of International Development, Bureau for Management, Office of Management Services, Services, Information and Records Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523–2701, Room 2.7C RRB, (202) 712–0960.

(4) *By Fax:* (202) 216–3070.

(b) *Third party requests.* Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in the FOIA by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.*, a copy of a death certificate or an obituary). As an exercise of administrative discretion, the agency can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(c) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable the Agency's personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the Agency's FOIA contact or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If, after receiving a request and the Agency determines that it does not reasonably describe the records sought, the Agency shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the Agency's designated FOIA Specialist or its FOIA Public Liaison, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the Agency's response to the request may be delayed or denied.

Subpart D—Responsibility for Responding to Requests

§ 212.6 Designation of authorized officials.

(a) The Assistant Administrator for the Bureau for Management (M) serves as the USAID Chief FOIA Officer. The Chief FOIA Officer has overall responsibility for USAID compliance with the FOIA. The Chief FOIA Officer provides high level oversight and support to USAID's FOIA programs, and recommends adjustments to agency practices, personnel, and funding as may be necessary to improve FOIA administration, including through an annual Chief FOIA Officers Report submitted to the U.S. Department of Justice. The Chief FOIA Officer is responsible for offering training to agency staff regarding their FOIA responsibilities; serves as the primary liaison with the Office of Government Information Services and the Office of Information Policy; and reviews, not less frequently than annually, all aspects of the Agency's administration of the FOIA to ensure compliance with the FOIA's requirements.

(b) The Bureau for Management, Office of Management Services, Information Records Division (M/MS/IRD) is the centralized FOIA office that receives, tracks, and processes all of USAID's FOIA requests to ensure transparency within the Agency.

(c) The Director, Bureau for Management, Office of Management Services (M/MS/OD) serves as the USAID FOIA Appeals Officer. The FOIA Appeals Officer is responsible for receiving and acting upon appeals from requesters whose initial FOIA requests for USAID records have been denied, in whole or in part.

(d) The Chief, Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD) serves as USAID's FOIA Officer and FOIA Public Liaison. The FOIA Officer is responsible for program direction, original denials, and policy decisions required for effective implementation of USAID's FOIA program. The FOIA Public Liaison serves as a supervisory official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA staff. In addition, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes.

(e) The FOIA Team Leader is the Principal Operations Officer within USAID for the processing of FOIA requests and release determinations.

(f) The FOIA Specialist also known as the Government Information Specialist (GIS) is responsible for processing requests and preparing records for release when such releases are authorized by the FOIA. They do not have the authority to make denials, including "no records" responses.

(g) The General Counsel (GC), FOIA Backstop Attorney Advisor has responsibility for providing legal advice on all USAID matters regarding or resulting from the FOIA. Upon request, GC advises M/MS/IRD on release and denial decisions, and apprises the FOIA Office of all significant developments with respect to the FOIA.

(h) Each Attorney Advisor designated to provide legal advice to USAID Bureaus/Independent Offices (B/IOs) is responsible for providing, at M/MS/IRD's request, legal advice on FOIA requests assigned to those B/IOs.

(i) The designated FOIA Liaison Officer (FLO) in each USAID Bureau and Office is responsible for tasking and facilitating the collection of responsive records and monitoring the production of records to M/MS/IRD.

§ 212.7 Processing of request.

(a) *In general.* In determining which records are responsive to a request, the Agency ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the Agency shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or to deny any requests for records that are maintained by the Agency.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Agency in response to a request, USAID shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion. As to any such record, USAID shall proceed in one of the following ways:

(1) *Consultation.* When records originated with USAID, but contain within them information of interest to another agency, or other Federal Government office, USAID should consult with that other agency prior to making a release determination.

(2) *Referral.* (i) When USAID believes that a different agency, or other Federal Government office is best able to determine whether to disclose the record, USAID should refer the responsibility for responding to the request regarding that record, as long as the referral is to an agency that is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if USAID and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever USAID refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(e) *Furnishing records.* USAID shall furnish copies only of records that the Agency has in its possession. The Agency is not compelled to create new records. The Agency is not required to perform research for a requester. The Agency is required to furnish only one copy of a record. If information exists in different forms, the Agency will provide the record in the form that best conserves government resources. Requests may specify the preferred form or format (including electronic formats) for the records sought by the requester. USAID will accommodate the form or format request if the record is readily reproducible in that form or format.

(f) *Archival records.* The Agency ordinarily transfers records in accordance with its retirement authority, included in ADS 502, to the National Archives. These records become the physical and legal custody of the National Archives. Accordingly, requests for retired Agency records should be submitted to the National Archives by mail addressed to Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740; by fax to (301) 837–1864; or by email to *specialaccess_foia@nara.gov.*

(g) *Records previously released.* If USAID has released a record, or a part of a record, to a requester in the past, the Agency will ordinarily release it to a new requester. However, the Agency will not release it to the new requester if a statute forbids this disclosure, or if an exemption applies that did not apply earlier, or was applied differently in the previous situations.

(h*) Unauthorized disclosure.* The principle stated in paragraph (f) of this section, does not apply if the previous release was unauthorized.

(i*) Poor copy.* If USAID cannot make a legible copy of a record to be released, the Agency is not required to reconstruct it. Instead, the Agency will furnish the best copy possible and note its poor quality in the Agency's reply.

Subpart E—Reasons for Withholding Some Records

§ 212.8 General policy.

(a) Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. Information obtained by the Agency from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed, to the extent it can be withheld under one of these exemptions. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Agency.

(b) USAID shall:

(1) Withhold information under the FOIA only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law.

(2) Consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible.

(3) Take reasonable steps necessary to segregate and release nonexempt information.

§ 212.9 Exemption 1: National defense and foreign policy.

Exemption 1 of the FOIA permits the withholding of matters specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified under such Executive Order.

§ 212.10 Exemption 2: Internal personnel rules and practices.

Exemption 2 of the FOIA covers matters related solely to USAID's internal personnel rules and practices of the Agency.

§ 212.11 Exemption 3: Records exempted by other statutes.

(a) Exemption 3 of the FOIA incorporates the various nondisclosure provisions that are contained in other federal statutes. Exemption 3 allows the withholding of information prohibited from disclosure by another statute only if one of two disjunctive requirements are met. The statute either:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(b) A statute thus falls within Exemption 3 coverage if it satisfies any one of its disjunctive requirements.

§ 212.12 Exemption 4: Trade secrets and confidential commercial or financial information.

Exemption 4 of the FOIA protects trade secrets and commercial or financial information obtain for a person [that is] privilege or confidential.

(a) A trade secret has been narrowly defined by the courts under the FOIA as a commercially valuable plan, formula, process, or device that is used for making, preparing, compounding or processing trade commodities and that can be said to be the end product of either innovation or substantial effort.

(b) Confidential commercial or financial information is information that relates to business or trade that has been obtained from a person (other than a federal employee), and has not been shared or made available to the public.

§ 212.13 Exemption 5: Internal memoranda.

Exemption 5 of the FOIA applies to inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Agency. This includes internal advice, recommendations, and subjective evaluations, as opposed to factual matters contained in records that pertain to the decision-making process of an agency, whether within or among agencies. The three primary privileges incorporated in Exemption 5 are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

(a) *The deliberative process privilege* allows the Agency to withhold documents which reflect deliberative, pre-decisional communications. This privilege protects the integrity of agencies' decision-making processes. There are two requirements that must be met to withhold under the deliberative process privilege: Information must be pre-decisional and deliberative. The Agency has an obligation to segregate out and release factual portions. The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(b) *The attorney work-product privilege* only applies when the document was created by or at the direction of an attorney; and created in reasonable anticipation of litigation. This privilege covers both factual and deliberative materials, therefore, the Agency is not required to segregate out and release factual portions of attorney work-product documents.

(c) *The attorney-client privilege* protects confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. This privilege is not limited to litigation and includes protection for facts provided by the client as well as the attorney's opinions. This privilege covers both factual and deliberative materials.

§ 212.14 Exemption 6: Clearly unwarranted invasion of personal privacy.

Exemption 6 of the FOIA applies to personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption protects the privacy interests of individuals by allowing USAID to withhold personal data kept in its files where there is an expectation of privacy. Once it has been determined that a personal privacy interest is threatened by a requested disclosure, the exemption requires agencies to strike a balance between an individual's privacy interest and the public's interest in disclosure.

§ 212.15 Exemption 7: Law enforcement.

Exemption 7 of the FOIA allows agencies to withhold records or information compiled for law enforcement purposes, but only to the extent that the production of such records would cause one of the following harms of Exemption 7 described below:

(a) Exemption (7)(A) allows the withholding of a law enforcement record that could reasonably be expected to interfere with enforcement proceedings.

(b) Exemption (7)(B) allows the withholding of law enforcement information that would deprive a person of a right to a fair trial or an impartial adjudication.

(c) Exemption (7)(C) recognizes that individuals have a privacy interest in information maintained in law enforcement files. If the disclosure of information could reasonably be expected to constitute an unwarranted invasion of personal privacy, the information may be exempt from disclosure.

(d) Exemption (7)(D) protects the identity of confidential sources. Information that could reasonably be expected to reveal the identity of a confidential source is exempt. A confidential source can include a state, local, or foreign agency or authority, or a private institution that furnished information on a confidential basis. In addition, the exemption protects information furnished by a confidential source if the data was compiled by a criminal law enforcement authority during a criminal investigation.

(e) Exemption (7)(E) protects from disclosure information that would reveal techniques and procedures for law enforcement investigations or prosecutions or that would disclose guidelines for law enforcement investigations or prosecutions if disclosure of the information could reasonably be expected to risk circumvention of the law.

(f) Exemption (7)(F) protects law enforcement information that could reasonably be expected to endanger the life or physical safety of any individual.

§ 212.16 Exemption 8: Records on financial institutions.

Exemption 8 of the FOIA protects information that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (such as Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, or similar agencies).

§ 212.17 Exemption 9: Records concerning geological information.

Exemption 9 of the FOIA covers geological and geophysical information and data, including maps, concerning wells.

§ 212.18 Exclusions one through three.

(a) The FOIA contains three special protection provisions that expressly authorize federal law enforcement agencies, for especially sensitive records under certain specified circumstances, to treat the records as not subject to the FOIA. USAID may not be required to confirm the existence of these categories of records. If these records are requested, USAID may respond that there are no records responsive to the request. However, these exclusions do not broaden the authority of the USAID to withhold documents from the public. The exclusions are only applicable to information that is otherwise exempt from disclosure.

(1) *Exclusion 1.* (i) The first exclusion may be used when a request seeks information described in the FOIA, subsection (b)(7)(A), and meets the following requirements:

(A) The investigation in question must involve a possible violation of criminal law.

(B) There must be reason to believe that the subject of the investigation is not already aware that the investigation is underway.

(C) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(ii) USAID may respond to a FOIA request for investigatory records as if the records are not subject to the requirements of the FOIA when all of these conditions exist. In other words, the USAID response does not have to reveal that it is conducting an investigation.

(2) *Exclusion 2.* Informant records maintained by USAID criminal law enforcement filed under the informant's name or personal identifier are covered by Exclusion 2. USAID is not required to confirm the existence of these records unless the informant's status has been officially confirmed. This exclusion helps agencies to protect the identity of confidential informants.

(3) *Exclusion 3.* The third exclusion only applies to records maintained by the Federal Bureau of Investigation, which pertain to foreign intelligence, counterintelligence, or international terrorism. When the existence of these types of records is classified, the FBI may treat the records as not subject to the requirements of FOIA.

(b) Requesters who believe that records were improperly withheld because of the exclusions can seek judicial review by filing suit in Federal District Court.

Subpart F—Timing of Responses to Requests

§ 212.19 Time limits.

(a) *In general.* The Agency ordinarily will respond to requests according to their order of receipt. In instances involving misdirected requests that are re-routed, the response time will commence on the date that the request is received by the FOIA office that is designated to receive requests.

(b) *Multitrack processing.* (1) When the Agency has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(2) The Agency may establish as many processing tracks as appropriate; processing within each track shall ordinarily be based on a "first-in, first-out" concept, and rank-ordered by the date of receipt of the request.

(3) The Agency may provide a requester whose request does not qualify for the fastest track an opportunity to limit the scope of the request in order to qualify for a faster track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(4) The Agency shall process requests in each track on a "first-in, first-out" basis, unless there are unusual circumstances as set forth in paragraph (c) of this section, or the requester is entitled to expedited processing as set forth paragraph (e) of this section.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the Agency extends the time limit on that basis, the Agency shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, the Agency shall, in the written notice, notify the requester of right to seek dispute resolution services from the Office of Government Information Services (OGIS). In addition, the Agency shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing.

(d) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, the Agency may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Agency shall not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be

helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, the Agency may waive the formal certification requirement.

(3) The Agency shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

Subpart G—Responses to Requests

§ 212.20 Responsibility for responding to requests.

(a) *In general.* USAID should, to the extent practicable, communicate with requesters having access to the Internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* USAID shall acknowledge the request and assign it an individualized tracking number. The Agency shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* Once the Agency makes a determination to grant a request in full or in part, it shall notify the requester in writing. The Agency also shall inform the requester of any fees charged and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(d) *Adverse determinations of requests.* If the Agency has made an adverse determination denying a request in any respect, the Agency shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(e) *Information furnished.* All denials are in writing and describe in general terms the material withheld; state the reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request.

(f) *Conducting searches.* USAID performs a diligent search for records to satisfy your request. Nevertheless, the Agency may not be able to find the records requested using the information provided, or the records may not exist. If the Agency advises the requester that the Agency has been unable to find the records despite a diligent search, this does not constitute a denial of the request and preserves the right to appeal.

Subpart H—Confidential Commercial Information

§ 212.21 Policy and procedure.

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained by the Agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Business submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to business submitters is required.* (1) The Agency shall promptly provide written notice to a business submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the Agency determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the business submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Agency has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to business submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information is exempt under the FOIA;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the business submitter appears obviously frivolous, except that, in such a case, the Agency shall give the business submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) The Agency shall specify a reasonable time period within which the business submitter must respond to the notice referenced above. If a business submitter has any objections to disclosure, the business submitter should:

(i) Provide the Agency with a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the business submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(ii) Designate by appropriate markings, either at the time a record is submitted to the Agency or within a reasonable period time thereafter, those portions of the record which it deems to contain confidential commercial information. The designation shall be accompanied by a certification made by the business submitter, its agent or designee that to the best of the business submitter's knowledge, information and belief, the record does, in fact, contain confidential commercial information that has not previously been disclosed to the public.

(2) A business submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the Agency after the date of any disclosure decision shall not be considered by the Agency. Any information provided by a business submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* The Agency shall consider a business submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever the Agency decides to disclose information over the objection of a business submitter, the Agency shall provide the business submitter written notice, which shall include:

(1) A statement of the reasons why each of the business submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Agency shall promptly notify the business submitter.

Subpart I—Administrative Appeals

§ 212.22 Appeal procedures.

USAID must inform the requester of the reasons for the denial and the requester's right to appeal the denial to the FOIA Appeals Officer whenever a FOIA request is denied.

(a) *What a requester can appeal.* A requester may appeal the withholding of a document or denial of a fee waiver request. A requester may contest the type or amount of fees that were charged, or may appeal any other type of adverse determination under the FOIA. A requester may also appeal because USAID failed to conduct an adequate search for the documents requested. However, a requester may not file an administrative appeal for the lack of a timely response. A requester may administratively appeal any portion denied when their request is granted in part and denied in part. An appeal does not affect the release of the documents that may be disclosed if the Agency has agreed to disclose some but not all requested documents.

(b) *Requirements for making an appeal.* A requester may appeal any adverse determinations to USAID. The requester must make the appeal in writing. To be considered timely, the appeal must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response. The appeal should clearly identify the Agency's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(c) *Adjudication of appeals.* (1) The Director of the Bureau for Management Services or designee will conduct de novo review and make the final determination on the appeals.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(d)) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds the Agency's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Agency's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The Agency will thereafter further process the request in accordance with that appeal determination and respond directly to the requester.

(e) *When appeal is required.* Before seeking review by a court of the Agency's adverse determination, a requester generally must first submit a timely administrative appeal.

(f) *Where to file an appeal.* An appeal may be filed by sending a letter to: FOIA Appeals Officer, Bureau for Management Director, Office of Management Services, U.S. Agency for International Development Room 2.12–010, RRB, Washington, DC 20523–4601. There is no charge for filing an administrative appeal.

§ 212.23 Mediation and dispute services.

The Office of Government Information Services of the National Archives and Records Administration (OGIS) is a Freedom of Information Act (FOIA) resource for the public and the government. Congress has charged OGIS with reviewing FOIA policies, procedures and compliance of Federal agencies and to recommend changes to the FOIA. OGIS' mission also includes resolving FOIA disputes between Federal agencies and requesters. In the Administrative appeal process, OGIS works as a non-exclusive alternative to litigation.

When USAID makes a determination on a request, the Agency shall offer the services of the FOIA Public Liaison, and will notify requesters of the mediation services provided by OGIS. Specifically, USAID will include in the Agency's notification to the requester;

(a) The right of the requester to seek assistance from the FOIA Public Liaison of the Agency, and in the case of an adverse determination;

(b) The right of the requester to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services.

Subpart J—Preservation of Records

§ 212.24 Policy and procedures.

The Agency shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and appropriate records disposition authority granted by NARA. Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

Subpart K—Fees

§ 212.25 Fees to be charged—general.

(a) *In general.* USAID shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the Office of Management and Budget (OMB) Guidelines. In order to resolve any fee issues that arise under this section, the Agency may contact a requester for additional information. The Agency shall ensure that search, review, and duplication are conducted in the most efficient and the least expensive manner. USAID ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Agency's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that the Agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal.

(5) *Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(6) *Representative of the news media* is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(7) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the Agency shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (d) of this section. The Agency may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(2) *Duplication.* Duplication fees shall be charged to all requesters, subject to the restrictions of paragraph (d) of this section. The Agency shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the agency in the form or format requested. Where photocopies are supplied, the Agency shall provide one copy per request at a cost of twenty cents per page. For copies of records produced on tapes, disks, or other media, the direct costs of producing the copy, including operator time shall be charged. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, the Agency shall charge the direct costs.

(3) *Review.* Review fees shall be charged to requesters who make commercial use requests. Review fees shall be assessed in connection with the initial review of the record, *i.e.,* the review conducted by the agency to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Agency re-review of the records in order to consider the use of other exemptions may be assessed as review fees.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2) When the Agency determines that unusual circumstances apply to the processing of a request, and the Agency has provided timely written notice to the requester, the delay is excused for an additional 10 days. If the Agency fails to comply with the extended time limit, it may not charge search fees (or for requesters with preferred fee status, may not charge duplication fees).

(i) *Exception:* If unusual circumstances apply and "more than 5000 pages are necessary to respond to the request," the Agency may charge search fees (or, for requesters in preferred fee status, may charge duplication fees) if timely written notice has been made to the requester and the Agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(ii) *Court Determination that exceptional circumstances exist:* If a court determines that exceptional circumstances exist, the Agency's failure to comply with a time limit shall be excused for the length of time provided by the court order.

(3) If the Agency fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(4) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(5) Except for requesters seeking records for a commercial use, the Agency shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(6) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of $25.00.* (1) When the Agency determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the Agency shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the agency shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of $25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Agency is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Agency estimates that the total fee will exceed that amount, the Agency shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Agency shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Agency shall make available their FOIA Public Liaison or other FOIA Specialists to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the Agency chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The Agency may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the agency. The Agency shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When the Agency reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, the Agency will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (i)(3) of this section, the agency shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When the Agency determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Agency may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the agency within 30 calendar days of the billing date, the Agency may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Agency may require that the requester make an advance payment of the full amount of any anticipated fee before the Agency begins to process a new request or continues to process a pending request or any pending appeal. If the Agency has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Agency requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Agency's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Agency shall inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where the Agency determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, the Agency shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, the Agency shall not make value judgments about whether the information at issue is "important" enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Agency shall consider the following factors:

(i) The Agency shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. The Agency ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Agency and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received. A requester may appeal the denial of a fee waiver.

§ 212.26 Fees to be charged—requester categories.

(a) The following specific fees are charged for services rendered:

(1) Commercial Use

Search: $40.00 per hour.

Search costs will be assessed even though no records may be found or even if, after review, there is no disclosure or records.

Review: $55.00 per hour.

Duplication: 20¢ per page.

(2) Educational & Non-Commercial Scientific Institutions

Search: No fee.

Review: No fee.

Duplication: 20¢ per page after the first 100 pages.

(3) Representatives of the News Media

Search: No fee.

Review: No fee.

Duplication: 20¢ per page after the first 100 pages.

(4) All Others

Search: Same as "Commercial Users" except the first two hours shall be furnished without charge.

Review: No fee.

Duplication: 20¢ per page after the first 100 pages.

(b) If copies of records are provided in other than paper format (such as on microfiche, video tape, or as electronic data files), or other than first-class mail is requested or required, the requester is charged the actual cost of providing these additional services.

Subpart L—Annual Reporting Requirements

§ 212.27 Annual Report.

The FOIA requires each federal agency to submit an Annual Report to the Attorney General each year. The Annual Report contains detailed statistics on the numbers of requests received and processed by the Agency, the time taken to respond, and the outcome of each request, as well as many other vital statistics regarding the administration of the FOIA.

§ 212.28 Chief FOIA Officer's Report.

The Attorney General's 2009 FOIA Guidelines require the Chief FOIA Officer for each federal agency to submit a report to the Attorney General containing a detailed description of the steps taken by the Agency to improve FOIA compliance and transparency. These reports contain details of FOIA administration, as well as the steps taken to implement the Attorney General's 2009 FOIA Guidelines during each reporting year.

Subpart M—FOIA Definitions

§ 212.29 Glossary.

As used in this part:

Administrative FOIA Appeal is an independent review of the initial determination made in response to a FOIA request. Requesters who are dissatisfied with the response made on their initial request have a statutory right to appeal the initial determination made by the Agency.

Agency is any executive agency, military agency, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, USAID is an agency.

Backlog is the number of requests or administrative appeals that are pending beyond the statutory time period for a response.

Complex request is a request that typically seeks a high volume of material or requires additional steps to process such as the need to search for records in multiple locations.

Consultation is when USAID locates a record that contains information of interest to another agency, and USAID asks for the views of that other agency on the disclosablity of the records before any final determination is made.

Discretionary disclosure is information that the Agency releases even though it could have been withheld under one of the FOIA's exemptions. Agencies release information as a matter of discretion when there is no foreseeable harm in disclosure.

Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Electronic record is any information that is recorded in a form that only a computer can process and that satisfies the definition of a Federal record per the *Federal Records Act.* Federal electronic records are not necessarily kept in a "recordkeeping system" but may reside in a generic electronic information system or are produced by an application such as word processing or electronic mail.

Exemptions are nine categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called "exemptions" from disclosures.

Expedited processing is the FOIA response track granted in certain limited situations, specifically when a FOIA request is processed ahead of other pending requests.

FOIA Library is an online page on the Agency's FOIA Web site, where certain categories of records are proactively disclosed. The FOIA Library contains both operational documents about the Agency as well as records that have been frequently requested under the FOIA.

Freedom of Information Act or FOIA is a United States federal law that grants the public access to information possessed by government agencies. Upon written request, U.S. government agencies are required to release information unless it falls under one of nine exemptions listed in the Act.

Frequently requested records are records that have been requested three (3) or more times from the Agency.

Multi-track processing is a system that divides in-coming FOIA requests according to their complexity so that simple requests requiring relatively minimal review are placed in one processing track and more complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.

Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and agencies as an alternative to litigation. OGIS also reviews agency FOIA compliance, policies, and procedures and makes recommendations for improvement. The Office is a part of the National Archives and Records Administration, and was created by Congress as part of the OPEN Government Act of 2007, which amended the FOIA.

Proactive disclosures are records made publicly available by agencies without waiting for a specific FOIA request. Agencies now post on their Web sites material concerning their functions and mission. The FOIA itself requires agencies to make available certain categories of information, including final opinions and orders, specific policy statements, certain administrative staff manuals and frequently requested records.

Record means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the Agency and under the control of the Agency at the time of the request, including information maintained for the Agency by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Agency's automated information systems.

Referral occurs when an agency locates a record that originated with, or is of otherwise primary interest to another agency. It will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

Simple request is a FOIA request that an agency anticipates will involve a small volume of material or which will be able to process relatively quickly.

Subpart N—Other Rights and Services

§ 212.30 Rights and services qualified by the FOIA statute.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart O—Privacy Act Provisions

§ 212.31 Purpose and scope.

This subpart contains the rules that the USAID follows under the Privacy Act of 1974 (PA), 5 U.S.C. 552a, as amended. These rules should be read together with the text of the statute, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the agency that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the agency. If any records retrieved pursuant to an access request under the PA are found to be exempt from access under that Act, they will be processed for possible disclosure under the FOIA, as amended. No fees shall be charged for access to or amendment of PA records.

§ 212.32 Privacy definitions.

As used in this subpart, the following definitions shall apply:

(a) Individual means a citizen or a legal permanent resident alien (LPR) of the United States.

(b) Maintain includes maintain, collect, use, or disseminate.

(c) Record means any item, collection, or grouping of information about an individual that is maintained by the agency and that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

(d) System of records means a group of any records under the control of the agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

§ 212.33 Request for access to records.

(a) *In general.* Requests for access to records under the PA must be made in writing and mailed to the Bureau for Management Services, Information and Records Division at the address given in § 212.7.

(b) *Description of records sought.* Requests for access should describe the requested record(s) in sufficient detail to permit identification of the record(s). At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used, current complete mailing address, and date and place of birth (city, state and country). Helpful data includes the approximate time period of the record and the circumstances that give the individual reason to believe that the agency maintains a record under the individual's name or personal identifier, and, if known, the system of records in which the record is maintained. In certain instances, it may be necessary for the Agency to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(c) *Verification of personal identity.* The Agency will require reasonable identification of individuals requesting records about themselves under the PA's access provisions to ensure that records are only accessed by the proper persons. Requesters must state their full name, current address, citizenship or legal permanent resident alien status, and date and place of birth (city, state, and country). The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included.

(d) *Authorized third party access.* The Agency shall process all properly authorized third party requests, as described in this section, under the PA. In the absence of proper authorization from the individual to whom the records pertain, the Agency will process third party requests under the FOIA. The Agency's form, AID 507–1, may be used to certify the identity and provide third party authorization.

(1) *Parents and guardians of minor children.* Upon presentation of acceptable documentation of the parental or guardian relationship, a parent or guardian of a U.S. citizen or LPR minor (an unmarried person under the age of 18) may, on behalf of the minor, request records under the PA pertaining to the minor. In any case, U.S. citizen or LPR minors may request such records on their own behalf.

(2) *Guardians.* A guardian of an individual who has been declared by a court to be incompetent may act for and on behalf of the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(3) *Authorized representatives or designees.* When an individual wishes to authorize another person or persons access to his or her records, the individual may submit, in addition to the identity verification information described in paragraph (c) or paragraph (d) of this section. The designated third party must submit identity verification information described in paragraph (c).

(e) *Referrals and consultations.* If the Agency determines that records retrieved as responsive to the request were created by another agency, it ordinarily will refer the records to the originating agency for direct response to the requester. If the agency determines that records retrieved as responsive to the request are of interest to another agency, it may consult with the other agency before responding to the request. The Agency may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

(f) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access to any information compiled in reasonable anticipation of a civil action or proceeding.

(g) *Time limits.* The Agency will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

§ 212.34 Request to amend or correct records.

(a) An individual has the right to request that the Agency amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to the Bureau for Management, Management Services, Information Records Division at the address given in § 212.7, with ATTENTION: PRIVACY ACT AMENDMENT REQUEST written on the envelope. IRD will coordinate the review of the request with the appropriate offices of the Agency. The Agency will require verification of personal identity before it will initiate action to amend a record. Amendment requests should contain, at a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records shall be acknowledged within 10 working days.

(d) In reviewing a record in response to a request to amend, the Agency shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Agency agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing of its decision;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Agency denies an individual's request to amend a record, it shall advise the individual in writing of its decision and the reason for the refusal, and the procedures for the individual to request further review. See § 171.25 of this chapter.

§ 212.35 Appeals from denials of PA amendment requests.

(a) *How made.* Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, or where accountings of disclosures do not need to be provided to a requesting individual pursuant to 5 U.S.C. 552a(c)(3), an individual has a right to request an accounting of any disclosure that the Agency has made to another person, organization, or agency of any record about an individual. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each particular record in question and may be made by writing directly to the Appeals Officer, Bureau for Management, Office of Management Services at the address given in § 212.19.

(b) *Where accountings not required.* The Agency is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Agency who have a need for the record in the performance of their duties; and

(2) Disclosures required under the FOIA.

§ 212.36 Request for accounting of record disclosures.

(a) If the Agency denies a request for amendment of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial to the Appeals Review Panel. Any such appeal must be postmarked within 60 working days of the date of the Agency's denial letter and sent to: Appeals Officer, Bureau for Management, Office of Management Services at the address given in § 212.19.

(b) Appellants should submit an administrative appeal of any denial, in whole or in part, of a request for access to the PA at the above address. The Agency will assign a tracking number to the appeal.

(c) The Appeals Review Panel will decide appeals from denials of PA amendment requests within 30 business days, unless the Panel extends that period for good cause shown, from the date when it is received by the Panel.

(d) Appeals Review Panel decisions will be made in writing, and appellants will receive notification of the decision. A reversal will result in reprocessing of the request in accordance with that decision. An affirmance will include a brief statement of the reason for the affirmance and will inform the appellant that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel's decision, when applicable.

(e) If the Panel's decision is that a record shall be amended in accordance with the appellant's request, the Chairman shall direct the office responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance (if an accounting of previous disclosures has been made), and so advise the individual in writing.

(f) If the Panel's decision is that the amendment request is denied, in addition to the notification required by paragraph (d) of this section, the Chairman shall advise the appellant:

(1) Of the right to file a concise Statement of Disagreement stating the reasons for disagreement with the decision of the Department;

(2) Of the procedures for filing the Statement of Disagreement;

(3) That any Statement of Disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Agency, a brief statement by the Agency summarizing its reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(g) If the appellant files a Statement of Disagreement under paragraph (f) of this section, the Agency will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently access the record. When the disputed record is subsequently disclosed, the Agency will note the dispute and provide a copy of the Statement of Disagreement. The Agency may also include a brief summary of the reasons for not amending the record. Copies of the Agency's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under this part.

§ 212.37 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k), the Director or the Administrator may, where there is a compelling reason to do so, exempt a system of records, from any of the provisions of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Act if a system of records is:

(1) Subject to the provisions of 5 U.S.C. 552(b)(1); (2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act: Provided, however, That if any individual is denied any right, privilege, or benefit to which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(2) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(3) Required by statute to be maintained and used solely as statistical records;

(4) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(5) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(6) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) Each notice of a system of records that is the subject of an exemption under 5 U.S.C. 552a(k) will include a statement that the system has been exempted, the reasons therefore, and a reference to the **Federal Register**, volume and page, where the exemption rule can be found.

(c) The systems of records to be exempted under section (k) of the Act, the provisions of the Act from which they are being exempted, and the justification for the exemptions, are set forth below:

(1) Criminal Law Enforcement Records. If the 5 U.S.C. 552a(j)(2) exemption claimed under paragraph (c) of (216 22 CFR Ch. II–§ 215.13) and on the notice of systems of records to be published in the **Federal Register** on this same date is held to be invalid, then this system is determined to be exempt, under 5 U.S.C. 552(a)(k) (1) and (2) of the Act, from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). The reasons for asserting the exemptions are to protect the materials required by executive order to be kept secret in the interest of the national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering

these sources and law enforcement personnel.

(2) Personnel Security and Suitability Investigatory Records. This system is exempt under U.S.C. 552a(k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering those sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted.

(3) Litigation Records. This system is exempt under 5 U.S.C. 552(k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4) (G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information.

(4) Employee Equal Employment Opportunity Complaint Investigatory Records. This system is exempt under 5 U.S.C. 552a(k)(1) and (k)(2) from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4) (G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources.

(5) The following systems of records are exempt under 5 U.S.C. 552a(k)(5) from the provision of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4) (G), (H), (I); and (f): (i) Employee Conduct and Discipline Records. (ii) Employee Relations Records.

NOTE TO PARAGRAPH (c)(5): This exemption is claimed for these systems of records to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(6) Partner Vetting System. This system is exempt under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5) from the provision of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources, and to facilitate proper selection or continuance of the best applicants or persons for a given position or contract.

Dated: September 21, 2016.

Lynn P. Winston,

Chief, Information and Records Division, FOIA Public Liaison/Agency Records Officer, U.S. Agency for International Development.

[FR Doc. 2016–23270 Filed 9–26–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2016–0275; FRL–9952–67–Region 6]

Determination of Nonattainment and Reclassification of the Houston-Galveston-Brazoria 2008 8-Hour Ozone Nonattainment Area; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Houston-Galveston-Brazoria ozone nonattainment area (HGB area) failed to attain the 2008 8hour ozone national ambient air quality standards (NAAQS) by the applicable attainment deadline of July 20, 2016, and thus is classified by operation of law as "Moderate". In this action, EPA is also proposing January 1, 2017 as the deadline by which Texas must submit to the EPA the State Implementation Plan (SIP) revisions that meet the CAA statutory and regulatory requirements that apply to 2008 ozone NAAQS nonattainment areas reclassified as Moderate.

DATES: Written comments must be received on or before October 27, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0275, at *http://www.regulations.gov* or via email to *salem.nevine@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Nevine Salem, (214) 665–7222, *salem.nevine@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Nevine Salem, (214) 665–7222, *salem.nevine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

I. Background

In 2008 we revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) annual fourth-highest daily maximum 8-hour average concentration, averaged over three years to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008). The HGB area was classified as a "Marginal" ozone nonattainment area for the 2008 8-hour ozone NAAQS and initially given an attainment date of no later than December 31, 2015 (77 FR 30088, May 21, 2012). The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

On December 23, 2014, the D.C. Circuit issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC* v. *EPA,* 777 F.3d 456, 464–69 (D.C. Cir. 2014). Consistent with the court's decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS, and set the attainment deadline for all 2008 ozone nonattainment areas, including the HGB area as July 20, 2015 (80 FR 12264, March 6, 2015). As the HGB area qualified for a 1-year extension of the attainment deadline we revised the attainment deadline to July 20, 2016 (81 FR 26697, May 4, 2016).

Classifications for ozone nonattainment areas range from "Marginal" (for areas with monitored ozone levels just exceeding the level of the NAAQS) to "Extreme" (for areas with monitored ozone levels well above the levels of the NAAQS). CAA section 182 stipulates the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementation regulations at 40 CFR 51.1108–1117, also establishes the timeframes by which air agencies must submit SIP revisions to address the applicable attainment planning elements, and the timeframes by which ozone nonattainment areas must attain the relevant NAAQS.

CAA section 181(b)(2) requires us to (1) determine whether the HGB area attained the 2008 ozone NAAQS by the attainment deadline, (2) reclassify the HGB area if the attainment deadline is not met, and (3) publish a **Federal Register** notice within 6 months of the attainment deadline identifying the new classification if the area failed to attain by the attainment deadline. The determination of attainment is based on the area's "design value" (DV), which for the 8-hour ozone NAAQS is the highest 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration of all regulatory monitors in the area. The 2008 ozone NAAQS is met when the DV is less than or equal to 0.075 ppm based on complete, consecutive calendar years of certified, quality assured ambient air monitoring data (40 CFR 50.15; 40 CFR 50, appendix P). A determination of attainment by the attainment deadline of July 20, 2016 is based on data from the consecutive calendar years of 2013–2015.

II. EPA Analysis

Ozone air quality data from monitoring sites in the HGB area is presented in Table 1. This data has been quality assured and certified by the State of Texas. The data is available in the EPA Air Quality System (AQS) database and also in the electronic docket for this action. The Manvel monitoring site (48–039–1004) recorded the highest 2013–2015 design value (0.080 ppm), which is also the DV for the area. Although the HGB air trends show overall progress in reducing ozone concentrations over the past 15 years, the HGB area is not eligible for an additional one-year attainment date extension[1] because, at 0.078 ppm, the average of the 2014 and 2015[2] annual fourth highest daily maximum eight-hour average ozone concentrations for the monitor in the area is greater than 0.075 ppm, the data for 2014–2015 indicates the area does not qualify for a second 1-year extension of the attainment deadline (40 CFR 51.1107).

TABLE 1—HGB AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (ppm), 2013–2015

Site name and No.	4th Highest daily maximum value			Design value (2013–2015)
	2013	2014	2015	
Garth (48–201–1017)	0.061	0.067	0.077	0.068
Deer Park (48–201–1039)	0.069	0.063	0.077	0.069
Aldine (48–201–0024)	0.074	0.068	0.095	0.079
Clinton Drive (48–201–1035)	0.067	0.058	0.084	0.069
Croquet (48–201–0051)	0.079	0.067	0.079	0.075
Monroe (48–201–0062)	0.074	0.065	0.073	0.070
NW Harris Co. (48–201–0029)	0.080	0.063	0.078	0.073
Westhollow (48–201–0066)	0.077	0.070	0.079	0.075
Lang (48–201–0047)	0.079	0.064	0.091	0.078
Wayside (48–201–0046)	0.070	0.062	0.078	0.070
Houston East (48–201–1034)	0.069	0.066	0.088	0.074
Bayland Park (48–201–0055)	0.081	0.067	0.080	0.076
Seabrook (48–201–1050)	0.067	0.065	0.083	0.071
Channelview (48–201–0026)	0.061	0.064	0.081	0.068
Lynchburg (48–201–1015)	0.064	0.059	0.079	0.067
Park Place (48–201–0416)	0.079	0.066	0.087	0.077
Galveston (48–167–1034)	0.064	0.071	0.084	0.073
Conroe (48–339–0078)	0.075	0.072	0.073	0.073
Manvel (48–039–1004)	0.084	0.071	0.086	0.080
Lake Jackson (48–039–1016)	0.067	0.061	0.065	0.064

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[1] The area would be eligible for the second 1-year extension if the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, is at or below 0.075 ppm.

[2] 2014 and 2015 are the last two full years of complete air quality data prior to the July 20, 2016, attainment date.

CAA section 181(b)(2)(A) provides that a marginal nonattainment area shall be reclassified by operation of law upon a determination by the EPA that such area failed to attain the relevant NAAQS by the applicable attainment date. Based on quality-assured ozone monitoring data from 2013–2015, as shown in Table 1, the new classification applicable to the HGB area would be the next higher classification of "moderate" under the CAA statutory scheme. Moderate nonattainment areas are required to attain the standard "as expeditiously as practicable" but no later than six years after the initial designation as nonattainment (which, in the case of the HGB area, is July 20, 2018). The attainment deadlines associated with each classification are prescribed by the CAA and codified at 40 CFR 51.1103.

In determining the deadline for the Moderate area SIP revisions, the EPA has discretion, per CAA section 182(i), to adjust the statutory deadline for submitting required SIP revisions for reclassified Moderate ozone nonattainment areas. CAA section 182(i) requires that reclassified areas meet the applicable plan submission requirements "according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." Under the Moderate area plan requirements of CAA section 182(b)(1) and 40 CFR 51.1108, states with ozone nonattainment areas classified as Moderate are provided 3 years (or 36 months) from the date of designation to submit a SIP revision complying with the Moderate ozone nonattainment plan requirements. For areas designated nonattainment for the 2008 ozone NAAQS and originally classified as Moderate, that deadline was July 20, 2015, a date that has already passed.

The EPA, therefore, interprets CAA section 182(i) as providing the authority to adjust the applicable deadlines for the HGB area "as necessary or appropriate to assure consistency among the required submissions." In determining a SIP submission deadline, we note that pursuant to 40 CFR 51.1108(d), for each nonattainment area the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case it is the 2017 ozone season (40 CFR 51.1100(h)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1, table D–3. For the purpose of this HGB area reclassification, January 1st is the beginning of the ozone monitoring season. Therefore, the beginning of the Moderate attainment year ozone season for the HGB area is January 1, 2017. This date is also the latest date that would be compatible with the deadline for Moderate area reasonably available control technology (RACT) to be in place (*i.e.*, begin no later than January 1 of the 5th year after the effective date of designation for the 2008 ozone NAAQS, which is, in this case, January 1, 2017).[3] Also, January 1, 2017 is the SIP submission deadline the EPA established for all other Marginal nonattainment areas in the country that were recently reclassified to Moderate.[4]

Accordingly, the EPA proposes that the required SIP revisions be submitted by Texas no later than January 1, 2017. This deadline also calls for implementation of applicable controls no later than January 1, 2017. Texas must submit a Moderate Area SIP that addresses the CAA's Moderate nonattainment area requirements as described in 40 CFR 51.1100. Those requirements include, (1) An attainment demonstration (CAA section 182(b) and 40 CFR 51.1108); (2) reasonable further progress (RFP) reductions in volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions (CAA sections 172 (c)(2) and 182(b)(1) and 40 CFR 51.1110); (3) provisions for reasonably available control technology (RACT) (CAA section 182(b)(2) and 40 CFR 51.1112(a)–(b)) and reasonably available control measures (RACM) (CAA section 172(c)(1) and 40 CFR 51.1112(c)); and (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)); (5) a vehicle inspection and maintenance program (CAA section 181(b)(4) and 40 CFR 51.350); and (6) NO_X and VOC emission offsets at a ratio of 1.15 to 1 for major source permits (CAA section 182(b)(5) and 40 CFR 51.165 (a)) See also the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b) and the general nonattainment plan provisions required under CAA section 172(c).

Should the State's analysis find that the area will not meet the Moderate area attainment deadline of July 20, 2018, the State can seek a voluntary reclassification to a higher classification category, which would provide additional time for attainment. We believe that voluntary reclassification for areas that are not likely to attain by their attainment date is an appropriate action that will facilitate focus on developing the attainment plans required (80 FR 12264, 12268, March 6, 2015). A voluntary reclassification to the Serious classification would set an attainment deadline of July 20, 2021 (40 CFR 51.1103).

III. Proposed Action

In accordance with CAA 181(b)(2), we are proposing to determine that the HGB ozone nonattainment area failed to attain the 2008 ozone NAAQS by the applicable attainment deadline of July 20, 2016, and to reclassify the area as Moderate. We are also proposing that Texas must submit to us the SIP revisions to address the Moderate ozone nonattainment area requirements of the CAA by January 1, 2017.

The EPA acknowledges that for the HGB area reclassified from Marginal to Moderate nonattainment, meeting the SIP submittal deadline of January 1, 2017 may be challenging. The EPA is working closely with TCEQ to support their SIP submittal in a timely manner. As discussed previously in section II of this notice, January 1, 2017 is a SIP submission deadline that is consistent for all Marginal nonattainment areas that are reclassified to Moderate for the 2008 ozone NAAQS, and is consistent with the timeframes in the CAA as codified in the EPA's implementing regulations.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to determine that the HGB area failed to meet an ozone NAAQS attainment deadline, reclassify the area and set the date when a revised SIP is due to EPA.

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[3] *See 40 CFR 51.112(a)(3).*

[4] *See 81 FR 26697, May 4, 2016.*

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to determine that the HGB area failed to meet an ozone NAAQS attainment deadline, reclassify the area and set the date when a revised SIP is due to EPA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to determine that the HGB area failed to meet an ozone NAAQS attainment deadline, reclassify the area and set the date when a revised SIP is due to EPA.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 21, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–23247 Filed 9–26–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA–2012–0103]

RIN 2126–AB90

Lease and Interchange of Vehicles; Motor Carriers of Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting; request for comment.

SUMMARY: FMCSA announces it will hold a roundtable discussion on October 31, 2016, as a follow-up to its August 31, 2016, notice of intent concerning the petitions for reconsideration of the final rule, titled "Lease and Interchange of Vehicles; Motor Carriers of Passengers," which published May 27, 2015. The meeting will be open to the public. Individuals with diverse experience, expertise, and perspectives are encouraged to attend. If all comments have been exhausted before the end of the session, the session may conclude early.

DATES: The roundtable discussion will be held on Monday, October 31, 2016, from 9:30 a.m. to 4:30 p.m., Eastern Time (ET) at the U.S. Department of Transportation, Media Center, 1200 New Jersey Avenue SE., Ground Floor, Washington, DC 20590. The entire proceedings will be public.

ADDRESSES: You may submit comments bearing the Federal Docket Management System Docket ID (FMCSA–2012–0103) using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Fax: 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours each day, 365 days each year. If you would like acknowledgment that the Agency received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online. The docket FMCSA–2016–0102 will remain open indefinitely.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Loretta G. Bitner, (202) 385–2428, *loretta.bitner@dot.gov,* Chief, Commercial Passenger Carrier Safety Division, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration. FMCSA office hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

For information about the public meeting: Ms. Shannon L. Watson, Senior Policy Advisor, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, by telephone at 202–366–2551, or by email at *Shannon.Watson@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at 202–366–9826. Business hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background:

On August 31, 2016, FMCSA published a notice of intent concerning the lease and interchange of passenger-carrying commercial motor vehicles (CMVs) (81 FR 59951). The purpose of the notice of intent was to inform the public about the Agency's decision concerning the 37 petitions for reconsideration which have been filed in the public docket referenced above. Upon review of these petitions, FMCSA concluded that some have merit. FMCSA, therefore, extended the compliance date of the final rule from January 1, 2017, to January 1, 2018 (82 FR 13998; March 16, 2016), to allow the Agency time to complete any rulemaking action to amend the rule where necessary.

FMCSA Decision

FMCSA plans to issue a rulemaking notice to address the four areas of concern in the August 31, 2016, notice of intent:

(1) Exclusion of "chartering" (*i.e.,* subcontracting) from the leasing requirements;

(2) Amending the CMV requirements for the location of temporary markings for leased/interchanged vehicles;

(3) Changing the requirement that carriers notify customers within 24 hours when they subcontract service to other carriers; and

(4) Expanding the 48-hour delay in preparing a lease to include emergencies when passengers are not actually on board a bus.

The Agency believes that less burdensome regulatory alternatives that would not adversely impact safety could be adopted before the January 1, 2018, compliance date.

Public Roundtable

FMCSA will hold a public roundtable on Monday, October 31, 2016, to discuss these four issue areas. The public will have an opportunity to speak about these issues and provide the Agency with information on how to address them. All public comments will be placed in the docket of this rulemaking. The agenda for this meeting will be posted on the FMCSA Web site *www.fmcsa.dot.gov* in the near future.

Issued on: September 15, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–23253 Filed 9–26–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160815741–6741–01]

RIN 0648–BG30

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Atlantic Coastal Migratory Pelagic Fishery; Atlantic Dolphin and Wahoo Fishery; and South Atlantic Snapper-Grouper Fishery; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advanced notice of proposed rulemaking; consideration of a control date.

SUMMARY: This proposed rule announces the establishment of a control date of June 15, 2016. The South Atlantic Fishery Management Council (Council) may use this control date if it decides to create restrictions limiting participation in the exclusive economic zone for the Federal charter vessel/headboat (for-hire) component of the recreational sectors of the coastal migratory pelagics fishery in the Atlantic, dolphin and wahoo fishery in the Atlantic, and snapper-grouper fishery in the South Atlantic. Anyone obtaining a Federal for-hire permit for these recreational sectors after the control date will not be assured of future access should a management regime that limits participation in the sector be prepared and implemented. This announcement is intended, in part, to promote awareness of the potential eligibility criteria for future access so as to discourage speculative entry into the Federal for-hire component of the recreational sectors of the Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, or the South Atlantic snapper-grouper fisheries, while the Council and NMFS consider whether and how access to these recreational sector components should be managed. NMFS invites comments on the establishment of this control date.

DATES: Written comments must be received by October 27, 2016.

ADDRESSES: You may submit comments identified by "NOAA–NMFS–2016–0121" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0121*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Mary Janine Vara, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mary Janine Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The coastal migratory pelagics fishery in the Atlantic is managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (CMP FMP). The dolphin and wahoo fishery in the Atlantic is managed under the FMP for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin and Wahoo FMP). The snapper-grouper fishery in the South Atlantic is managed under the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP). The CMP FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils. The Dolphin and Wahoo and Snapper-Grouper FMPs were prepared by the Council. The FMPs are implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622.

The Council voted at the June 2016 meeting to establish a control date of June 15, 2016, for the Federal for-hire component of the recreational sectors of the Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, and South Atlantic snapper-grouper fisheries. The Federal charter vessel/headboat permit for these recreational for-hire components is currently open access, available to anyone with a valid vessel registration. The control date enables the Council to inform current and potential participants that it is considering whether to create restrictions that limit fishery participation in the Federal for-hire component of the recreational sectors for Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, and South Atlantic snapper-grouper.

This proposed rule informs current and potential fishery participants in the Federal for-hire component of the recreational sectors for Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, and South Atlantic snapper-grouper that begin participating after June 15, 2016, they may not be ensured participation under future management of these fisheries. If the Council decides to amend the FMPs to restrict participation in the Federal for-hire component of the recreational sectors of the Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper fisheries in relation to this control date, an analysis of the specific administrative, biological, economic, and social effects will be prepared at that time.

Publication of the control date in the **Federal Register** informs participants of the Council's considerations, and gives notice to anyone obtaining a Federal for-hire permit for the Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper recreational sectors after the control date that they would not be assured of future access to the recreational sector components should management changes be implemented that would restrict participation. Implementation of any such management changes by the Council would require preparation of amendments to the respective FMPs and publication of a notice of availability and proposed rule in the **Federal Register** with public comment periods, and if approved by the Secretary of Commerce, issuance of a final rule.

Fishermen are not guaranteed future participation in a fishery, sector, or component within a sector regardless of when they obtained their permits or their level of participation in the fishery, sector, or component within a sector before or after the control date under consideration. The Council subsequently may choose a different control date or they may choose different management approaches without using a control date. The Council also may choose to take no further action to control entry or access to the Federal for-hire component of the recreational sectors of the Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper fisheries, in which case the control date may be rescinded.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the Federal for-hire component of the recreational sectors of the Atlantic coastal migratory pelagics, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–23226 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160706587–6814–01]

RIN 0648–BG21

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 16

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 16 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The Mid-Atlantic Fishery Management Council developed Amendment 16 to protect deep-sea corals from the impacts of commercial fishing gear in the Mid-Atlantic. Amendment 16 management measures include: A deep-sea coral protection area; a prohibition on the use of bottom-tending commercial fishing gear within the deep-sea coral protection area; an exemption for American lobster and deep-sea red crab pots and traps from the gear prohibition; a vessel monitoring system requirement for limited access *Illex* squid moratorium permit holders; provisions for vessels transiting through the deep-sea coral area; and expanded framework adjustment provisions for future modifications to the deep-sea coral protection measures. These proposed management measures are intended to protect deep-sea coral and deep-sea coral habitat while promoting the sustainable utilization and conservation of several different marine resources managed under the authority of the Mid-Atlantic Fishery Management Council.

DATES: Public comments must be received by November 1, 2016.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331. The EA/RIR/IRFA is also accessible online at *http://www.greateratlantic.fisheries.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2016–0086, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0086,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on MSB Amendment 16 Proposed Rule."

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Supervisory Fishery

Policy Analyst, (978) 281–9288, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2013, the Council published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (78 FR 3401) for Amendment 16 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) to consider measures to protect deep-sea corals from the impacts of commercial fishing gear in the Mid-Atlantic. The Council conducted scoping meetings during February 2013 to gather public comments on these issues. Following further development of Amendment 16 through 2013 and 2014, the Council conducted public hearings in January 2015. Following public hearings, and with disagreement about the boundaries of the various alternatives, the Council held a workshop with various stakeholders on April 29–30, 2015, to further refine the deep-sea coral area boundaries. The workshop was an example of effective collaboration among fishery managers, the fishing industry, environmental organizations, and the public to develop management recommendations with widespread support. The Council adopted Amendment 16 on June 10, 2015, and submitted Amendment 16 on August 15, 2016, for final review by NMFS, acting on behalf of the Secretary of Commerce.

The Council developed the action, and the measures described in this notice, under the discretionary provisions for deep-sea coral protection in section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This provision gives the Regional Fishery Management Councils the authority to:

(A) Designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) Designate such zones ~~in~~ areas where deep-sea corals are identified under section 408 (this section describes the deep-sea coral research and technology program), to protect deep-sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep-sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) With respect to any closure of an area under the Magnuson-Stevens Act that prohibits all fishing, ensure that such closure:

(i) Is based on the best scientific information available;

(ii) Includes criteria to assess the conservation benefit of the closed area;

(iii) Establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

(iv) Is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: Users of the area, overall fishing activity, fishery science, and fishery and marine conservation.

Consistent with these provisions, the Council proposed the measures in Amendment 16 to balance the impacts of measures implemented under this discretionary authority with the management objectives of the Mackerel, Squid, and Butterfish FMP and the value of potentially affected commercial fisheries.

Proposed Measures

Deep-Sea Coral Protection Area

Amendment 16 would establish a deep-sea coral protection area that would be in Mid-Atlantic waters only. It would consist of a broad zone that would start at a depth contour of approximately 450 meters (m) and extend to the U.S. Exclusive Economic Zone (EEZ) boundary, and to the north and south to the boundaries of the Mid-Atlantic waters (as defined in the Magnuson-Stevens Act). In addition, the deep-sea coral protection area would include 15 discrete zones that outline deep-sea canyons on the continental shelf in Mid-Atlantic waters. The deep-sea coral area, including both broad and discrete zones, would be one continuous area.

The Council proposed the broad coral zone designation to be precautionary in nature and to freeze the footprint of fishing to protect corals from future expansion of fishing effort into deeper waters. The broad coral zone would be designated with the landward boundary drawn between the 400 m contour as a hard landward boundary and the 500 m contour as a hard seaward boundary. The line created using this technique would focus on the center point (450 m) between the hard landward and seaward boundaries, with a 50-m depth tolerance in either direction as a guide used to draw this line as straight as possible without crossing the hard boundaries. In areas where there is conflict or overlap between this broad zone and any designated discrete zone boundaries, the discrete zone boundaries would be prioritized. From the landward boundary, the broad zone boundaries would extend along the northern and southern boundaries of the Mid-Atlantic management region, and to the edge of the EEZ as the eastward boundary.

The discrete coral zones would be specific submarine canyons and slope areas located in Mid-Atlantic waters. The boundaries were developed collaboratively by participants at the Council's April 29–30, 2015, Deep-sea Corals Workshop in Linthicum, MD. Participants included the Council's Squid, Mackerel, and Butterfish Advisory Panel, the Ecosystems and Ocean Planning Advisory Panel, members of the Deep-sea Corals Fishery Management Action Team, invited deep-sea coral experts, additional fishing industry representatives, and other interested stakeholders. The canyons and slope areas were identified as areas with observed coral presence or highly likely coral presence indicated by modeled suitable habitat. Therefore, prohibiting bottom-tending fishing gear in these areas would prevent interaction with and damage to deep-sea corals that either are known through observation to live in these areas or that are likely to live there. The discrete coral zones are: Block Canyon; Ryan and McMaster Canyons; Emery and Uchupi Canyons; Jones and Babylon Canyons; Hudson Canyon; Mey-Lindenkohl Slope; Spencer Canyon; Wilmington Canyon; North Heyes and South Wilmington Canyons; South Vries Canyon; Baltimore Canyon; Warr and Phoenix Canyon Complex; Accomac and Leonard Canyons; Washington Canyon; and Norfolk Canyon.

Gear Restrictions in the Deep-Sea Coral Area

This action would prohibit the use of bottom-tending commercial fishing gear within the designated deep-sea coral area, including: Bottom-tending otter trawls; bottom-tending beam trawls; hydraulic dredges; non-hydraulic dredges; bottom-tending seines; bottom-tending longlines; sink or anchored gill nets; and pots and traps except those used to fish for red crab and American lobster. The prohibition on these gears would protect deep-sea corals from interaction with and damage from bottom-tending fishing gear.

Vessels would be allowed to transit the deep-sea coral area protection area provided the vessels bring bottom-tending fishing gear onboard the vessel, and reel bottom-tending trawl gear onto the net reel. The Council proposed these slightly less restrictive transiting provisions because the majority of transiting will be through the very narrow canyon heads (*i.e.,* the narrow tips of the canyons that extend landward of the broad coral zone landward boundary). The Council determined that the normal gear stowage requirements, and requirements that gear be unavailable for immediate use, (at 50 CFR 648.2) would be too burdensome for commercial vessels within the narrow areas of some of the discrete coral zones.

Administrative Measures

Vessels issued an *Illex* squid moratorium permit would be required to have a vessel monitoring system (VMS) installed and vessel operators of these vessels would have to declare *Illex* squid trips on which 10,000 lb (4.53 mt) or more of *Illex* squid would be harvested. The *Illex* squid fishery currently does not have a requirement to install and operate VMS. By requiring *Illex* squid vessels to have VMS and declare *Illex* fishing trips prior to leaving port, this measure would facilitate enforcement of the deep-sea coral area and gear restrictions. NMFS notes that all *Illex* vessels currently have VMS installed and that all of these vessels are already required to declare trips. Therefore, this provision does not create any new operational requirement for *Illex* squid vessel owners or operators.

This action would expand the framework adjustment provisions in the FMP to facilitate future modifications to the deep-sea coral protection measures. The framework measures would include:

Modifications to coral zone boundaries via framework action;

Modifications to the boundaries of broad or discrete deep-sea coral zones through a framework action; and

Modification of management measures within deep-sea coral protection areas. This alternative would give the Council the option to modify fishing restrictions, exemptions, monitoring requirements, and other management measures within deep-sea coral zones through a framework action, including measures directed at gear and species not currently addressed in the FMP, with the purpose of such measures being to further the FMP's goal of protecting deep-sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep-sea corals. This would also include the ability to add a prohibition on anchoring in deep-sea coral protection areas;

Addition of discrete coral zones; and

Implementation of special access program for deep-sea coral protection area. This alternative would give the Council the option to design and implement a special access program for commercial fishery operations in deep-sea coral zones through a framework action.

Formal Naming of the Deep-Sea Coral Protection Area

The Council recommended that the deep-sea coral protection area should be named in honor of the late Senator Frank R. Lautenberg. Senator Lautenberg was responsible for several important pieces of ocean conservation legislation and authored several provisions included in the most recent reauthorized Magnuson-Stevens Act (2007), including the discretionary provision for corals. Therefore, the Council proposed that the combined broad and discrete zones be officially known as the "Frank R. Lautenberg Deep-Sea Coral Protection Area."

A Notice of Availability (NOA) for Amendment 16, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on September 2, 2016 (81 FR 60666). The comment period on the Amendment 16 NOA ends on November 1, 2016. Comments submitted on the NOA and/or this proposed rule prior to November 1, 2016, will be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 16. NMFS will consider comments received by the end of the comment period for this proposed rule (November 1, 2016) in its decision regarding measures to be implemented.

The proposed regulations are based on the measures in Amendment 16 that would establish a deep-sea coral protection zone and management measures to limit commercial fishing gear interactions with deep-sea corals. On August 3, 2016, the Council deemed the regulations included in this proposed rule as necessary and appropriate to implement the Council's recommended deep-sea coral protection measures included in Amendment 16.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 16 to the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via online at *www.greateratlantic.fisheries.noaa.gov.*

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule

This action proposes to implement measures to protect deep-sea corals from fishing gear. The preamble to this proposed rule includes a complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, and these are not repeated here.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194; December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016 (Id. at 81194).

The Council prepared the IRFA under the SBA standards and submitted the action for initial NMFS review in March 2016, prior to the July 1, 2016, effective date of NMFS' new size standard for commercial fishing businesses, under the assumption that the proposed rule would also publish prior to the July 1, 2016, effective date. However, NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. The new size standard could result in some of the large businesses being considered small, but, as explained below, this does not affect the conclusions of the analysis. The following summarizes the IRFA using the SBA definitions of small businesses.

The proposed deep-sea coral zones measures in association with other management measures within the coral zones could affect any business entity that has an active federal fishing permit and fishes in the proposed zone/gear restricted areas. In order to identify firms, vessel ownership data, which have been added to the permit database, were used to identify all the individuals who own fishing vessels. With this information, vessels were grouped together according to common owners. The resulting groupings were then treated as a fishing business (firm, affiliate, or entity), for purposes of identifying small and large firms. According to the ownership database a total of 113 finfish firms (all small entities) fished in the Council's preferred broad and discrete zones during 2014. Also in 2014, there were 184 small and 16 large shellfish entities. The ownership database shows that small finfish firms that operated in the Council's preferred broad and discrete zones generated average revenues that ranged from $18,344 (in 2013) to $21,055 (in 2014). The ownership database shows that small shellfish firms that operated in the Council's preferred broad and discrete zones generated average revenues that ranged from $35,276 (in 2014) to $58,723 (in 2012). The ownership database shows that large shellfish firms that operated in the Council's preferred broad and discrete zones generated average revenues that ranged from $146,901 (in 2013) to $314,223 (in 2012).

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule

The proposed action contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This action requires *Illex* squid vessels to install and operate VMS, and to declare *Illex* squid trips. However, NMFS has determined that all *Illex* squid vessels that would be affected by this action already have VMS. Because every *Illex* vessel has VMS, they are already required to enter a trip declaration for every trip. Therefore, there is no additional reporting burden imposed by this action.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

This action does not duplicate, overlap, or conflict with any other Federal law.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statues and Which Minimize Any Significant Economic Impact on Small Entities

The Council considered one alternative under the broad coral zone proposed measures that may have had less economic impact on small businesses and that met the Council's objective of protecting deep-sea corals. Using the same landward boundary as the proposed action, but prohibiting fishing with all mobile bottom-tending fishing gear (instead of the proposed prohibition on all bottom-tending gear, both mobile and static), may have had marginally lower overall average revenue reduction when compared to the proposed action because some bottom-tending gears would be allowed in the area.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 20, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.10, add paragraph (b)(11) and (p) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(11) Vessels issued an *Illex* squid moratorium permit.

* * * * *

(p) *Illex squid VMS notification requirement.* A vessel issued an *Illex* squid moratorium permit intending to declare into the *Illex* squid fishery must notify NMFS by declaring an *Illex* squid trip prior to leaving port at the start of each trip in order to harvest, possess, or land 10,000 lb (4,535.9 kg) or more of *Illex* squid on that trip.

■ 3. In § 648.14, add paragraph (b)(10) and revise paragraphs (g)(2)(v) introductory text and (g)(2)(v)(A) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(b) * * *

(10) Fish with bottom-tending gear within the Frank R. Lautenberg Deep-sea Coral Protection Area described at § 648.27, unless transiting pursuant to § 648.27(d), fishing lobster trap gear in accordance § 697.21, or fishing red crab trap gear in accordance with § 648.264. Bottom-tending gear includes but is not limited to bottom-tending otter trawls, bottom-tending beam trawls, hydraulic dredges, non-hydraulic dredges, bottom-tending seines, bottom longlines, pots and traps, and sink or anchored gill nets.

* * * * *

(g) * * *

(2) * * *

(v) *Reporting requirements in the limited access Atlantic mackerel, longfin squid/butterfish, and Illex squid moratorium fisheries.* (A) Fail to declare via VMS into the mackerel, longfin squid/butterfish, or Illex squid fisheries by entering the fishery code prior to leaving port at the start of each trip, if the vessel will harvest, possess, or land Atlantic mackerel, more than 2,500 lb (1,134 kg) of longfin squid, or more than 10,000 lb (4,535.9 kg) of Illex squid, and is issued a Limited Access Atlantic mackerel permit, longfin squid/butterfish moratorium permit, or Illex squid moratorium permit, pursuant to § 648.10.

* * * * *

■ 4. In § 648.25, revise paragraph (a)(1), redesignate paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4), and (a)(5), and add paragraph (a)(2) to read as follows:

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories:

(i) Adjustments within existing ABC control rule levels;

(ii) Adjustments to the existing MAFMC risk policy;

(iii) Introduction of new AMs, including sub-ACTs;

(iv) Minimum and maximum fish size;

(v) Gear restrictions, gear requirements or prohibitions;

(vi) Permitting restrictions;

(vii) Recreational possession limit, recreational seasons, and recreational harvest limit;

(viii) Closed areas;

(ix) Commercial seasons, commercial trip limits, commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch;

(x) Annual specification quota setting process;

(xi) FMP Monitoring Committee composition and process;

(xii) Description and identification of EFH (and fishing gear management measures that impact EFH);

(xiii) Description and identification of habitat areas of particular concern;

(xiv) Overfishing definition and related thresholds and targets;

(xv) Regional gear restrictions, regional season restrictions (including option to split seasons), regional management;

(xvi) Restrictions on vessel size (LOA and GRT) or shaft horsepower;

(xvii) Changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs;

(xviii) Set aside quota for scientific research;

(xix) Process for inseason adjustment to the annual specification;

(xx) Mortality caps for river herring and shad species, time/area management for river herring and shad species, and provisions for river herring and shad incidental catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting incidental catch events, compiling data, and notifying the fleet of changes to the area(s);

(xxi) The definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring incidental catch in a particular area(s);

(xxii) The threshold for river herring incidental catch that would trigger the need for vessels to be alerted and move out of the area(s), the distance that vessels would be required to move from the area(s), and the time that vessels would be required to remain out of the area(s);

(xxiii) Modifications to the broad and discrete deep-sea coral zone boundaries and the addition of discrete deep-sea coral zones;

(xxiv) Modifications to the management measures within the Frank R. Lautenberg Deep-sea Coral Protection Area and implementation of special access programs to the Frank R. Lautenberg Deep-sea Coral Protection Area; and

(xxv) Any other management measures currently included in the FMP.

(2) Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

* * * * *

■ 5. Add § 648.27 to read as follows:

§ 648.27 Frank R. Lautenberg Deep-Sea Coral Protection Area.

(a) No vessel may fish with bottom-tending gear within the Frank R. Lautenberg Deep-Sea Coral Protection Area described in this section, unless transiting pursuant to paragraph (d) of this section, fishing lobster trap gear in accordance § 697.21, or fishing red crab trap gear in accordance with § 648.264. Bottom-tending gear includes but is not limited to bottom-tending otter trawls, bottom-tending beam trawls, hydraulic dredges, non-hydraulic dredges, bottom-tending seines, bottom longlines, pots and traps, and sink or anchored gillnets. The Frank R. Lautenberg Deep-Sea Coral Protection Area consists of the Broad and Discrete Deep-Sea Coral Zones defined in paragraphs (b) and (c) of this section.

(b) *Broad Deep-Sea Coral Zone*. The Broad Deep-Sea Coral Zone is bounded on the east by the outer limit of the U.S. Exclusive Economic Zone, and bounded on all other sides by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Discrete Zone column means the point is shared with a Discrete Deep-Sea Coral Zone, as defined in part (c) of this section.

BROAD ZONE

Point	Latitude	Longitude	Discrete zone
1	36°33.02′ N.	71°29.33′ W.	
2	36°33.02′ N.	72°00′ W.	
3	36°33.02′ N.	73°00′ W.	
4	36°33.02′ N.	74°00′ W.	
5	36°33.02′ N.	74°42.14′ W.	
6	36°34.44′ N.	74°42.23′ W.	
7	36°35.53′ N.	74°41.59′ W.	
8	36°37.69′ N.	74°41.51′ W.	
9	36°42.09′ N.	74°39.07′ W.	
10	36°45.18′ N.	74°38′ W.	
11	36°45.69′ N.	74°38.55′ W.	
12	36°49.17′ N.	74°38.31′ W.	
13	36°49.56′ N.	74°37.77′ W.	
14	36°51.21′ N.	74°37.81′ W.	
15	36°51.78′ N.	74°37.43′ W.	
16	36°58.51′ N.	74°36.51′ W.	(*)
17	36°58.62′ N.	74°36.97′ W.	(*)
18	37°4.43′ N.	74°41.03′ W.	(*)
19	37°5.83′ N.	74°45.57′ W.	(*)
20	37°6.97′ N.	74°40.8′ W.	(*)
21	37°4.52′ N.	74°37.77′ W.	(*)
22	37°4.02′ N.	74°33.83′ W.	(*)
23	37°4.52′ N.	74°33.51′ W.	(*)
24	37°4.4′ N.	74°33.11′ W.	(*)
25	37°7.38′ N.	74°31.95′ W.	
26	37°8.32′ N.	74°32.4′ W.	
27	37°8.51′ N.	74°31.38′ W.	
28	37°9.44′ N.	74°31.5′ W.	
29	37°16.83′ N.	74°28.58′ W.	
30	37°17.81′ N.	74°27.67′ W.	
31	37°18.72′ N.	74°28.22′ W.	
32	37°22.74′ N.	74°26.24′ W.	(*)
33	37°22.87′ N.	74°26.16′ W.	(*)
34	37°24.44′ N.	74°28.57′ W.	(*)
35	37°24.67′ N.	74°29.71′ W.	(*)
36	37°25.93′ N.	74°30.13′ W.	(*)
37	37°27.25′ N.	74°30.2′ W.	(*)
38	37°28.6′ N.	74°30.6′ W.	(*)
39	37°29.43′ N.	74°30.29′ W.	(*)
40	37°29.53′ N.	74°29.95′ W.	(*)
41	37°27.68′ N.	74°28.82′ W.	(*)
42	37°27.06′ N.	74°28.76′ W.	(*)
43	37°26.39′ N.	74°27.76′ W.	(*)
44	37°26.3′ N.	74°26.87′ W.	(*)
45	37°25.69′ N.	74°25.63′ W.	(*)
46	37°25.83′ N.	74°24.22′ W.	(*)
47	37°25.68′ N.	74°24.03′ W.	(*)
48	37°28.04′ N.	74°23.17′ W.	
49	37°27.72′ N.	74°22.34′ W.	
50	37°30.13′ N.	74°17.77′ W.	
51	37°33.83′ N.	74°17.47′ W.	
52	37°35.48′ N.	74°14.84′ W.	
53	37°36.99′ N.	74°14.01′ W.	
54	37°37.23′ N.	74°13.02′ W.	
55	37°42.85′ N.	74°9.97′ W.	
56	37°43.5′ N.	74°8.79′ W.	
57	37°45.22′ N.	74°9.2′ W.	
58	37°45.15′ N.	74°7.24′ W.	(*)
59	37°45.88′ N.	74°7.44′ W.	(*)
60	37°46.7′ N.	74°5.98′ W.	(*)
61	37°49.62′ N.	74°6.03′ W.	(*)
62	37°51.25′ N.	74°5.48′ W.	(*)
63	37°51.99′ N.	74°4.51′ W.	(*)
64	37°51.37′ N.	74°3.3′ W.	(*)
65	37°50.63′ N.	74°2.69′ W.	(*)
66	37°49.62′ N.	74°2.28′ W.	(*)
67	37°50.28′ N.	74°0.67′ W.	(*)
68	37°53.68′ N.	73°57.41′ W.	(*)
69	37°55.07′ N.	73°57.27′ W.	(*)
70	38°3.29′ N.	73°49.1′ W.	(*)
71	38°6.19′ N.	73°51.59′ W.	(*)
72	38°7.67′ N.	73°52.19′ W.	(*)
73	38°9.04′ N.	73°52.39′ W.	(*)
74	38°10.1′ N.	73°52.32′ W.	(*)
75	38°11.98′ N.	73°52.65′ W.	(*)
76	38°13.74′ N.	73°50.73′ W.	(*)
77	38°13.15′ N.	73°49.77′ W.	(*)
78	38°10.92′ N.	73°50.37′ W.	(*)
79	38°10.2′ N.	73°49.63′ W.	(*)
80	38°9.26′ N.	73°49.68′ W.	(*)
81	38°8.38′ N.	73°49.51′ W.	(*)
82	38°7.59′ N.	73°47.91′ W.	(*)
83	38°6.96′ N.	73°47.25′ W.	(*)
84	38°6.51′ N.	73°46.99′ W.	(*)
85	38°5.69′ N.	73°45.56′ W.	(*)
86	38°6.35′ N.	73°44.8′ W.	(*)
87	38°7.5′ N.	73°45.2′ W.	(*)
88	38°9.24′ N.	73°42.61′ W.	(*)
89	38°9.41′ N.	73°41.63′ W.	
90	38°15.13′ N.	73°37.58′ W.	
91	38°15.25′ N.	73°36.2′ W.	(*)
92	38°16.19′ N.	73°36.91′ W.	(*)

BROAD ZONE—Continued

Point	Latitude	Longitude	Discrete zone
93	38°16.89′ N.	73°36.66′ W.	(*)
94	38°16.91′ N.	73°36.35′ W.	(*)
96	38°17.63′ N.	73°35.35′ W.	(*)
97	38°18.55′ N.	73°34.44′ W.	(*)
98	38°18.38′ N.	73°33.4′ W.	(*)
99	38°19.04′ N.	73°33.02′ W.	(*)
100	38°25.08′ N.	73°34.99′ W.	(*)
101	38°26.32′ N.	73°33.44′ W.	(*)
102	38°29.72′ N.	73°30.65′ W.	(*)
103	38°28.65′ N.	73°29.37′ W.	(*)
104	38°25.53′ N.	73°30.94′ W.	(*)
105	38°25.26′ N.	73°29.97′ W.	(*)
106	38°23.75′ N.	73°30.16′ W.	(*)
107	38°23.47′ N.	73°29.7′ W.	(*)
108	38°22.76′ N.	73°29.34′ W.	(*)
109	38°22.5′ N.	73°27.63′ W.	(*)
110	38°21.59′ N.	73°26.87′ W.	(*)
111	38°23.07′ N.	73°24.11′ W.	
112	38°25.83′ N.	73°22.39′ W.	
113	38°25.97′ N.	73°21.43′ W.	
114	38°34.14′ N.	73°11.14′ W.	(*)
115	38°35.1′ N.	73°10.43′ W.	(*)
116	38°35.94′ N.	73°11.25′ W.	(*)
117	38°37.57′ N.	73°10.49′ W.	(*)
118	38°37.21′ N.	73°9.41′ W.	(*)
119	38°36.72′ N.	73°8.85′ W.	(*)
120	38°43′ N.	73°1.24′ W.	(*)
121	38°43.66′ N.	73°0.36′ W.	(*)
122	38°45′ N.	73°0.27′ W.	(*)
123	38°46.68′ N.	73°1.07′ W.	(*)
124	38°47.54′ N.	73°2.24′ W.	(*)
125	38°47.84′ N.	73°2.24′ W.	(*)
126	38°49.03′ N.	73°1.53′ W.	(*)
127	38°48.45′ N.	73°1′ W.	(*)
128	38°49.15′ N.	72°58.98′ W.	(*)
129	38°48.03′ N.	72°56.7′ W.	(*)
130	38°49.84′ N.	72°55.54′ W.	(*)
131	38°52.4′ N.	72°52.5′ W.	(*)
132	38°53.87′ N.	72°53.36′ W.	(*)
133	38°54.17′ N.	72°52.58′ W.	(*)
134	38°54.7′ N.	72°50.26′ W.	(*)
135	38°57.2′ N.	72°47.74′ W.	(*)
136	38°58.64′ N.	72°48.35′ W.	(*)
137	38°59.3′ N.	72°47.86′ W.	(*)
138	38°59.22′ N.	72°46.69′ W.	(*)
139	39°0.13′ N.	72°45.47′ W.	(*)
140	39°1.69′ N.	72°45.74′ W.	(*)
141	39°1.49′ N.	72°43.67′ W.	(*)
142	39°3.9′ N.	72°40.83′ W.	(*)
143	39°7.35′ N.	72°41.26′ W.	(*)
144	39°7.16′ N.	72°37.21′ W.	(*)
145	39°6.52′ N.	72°35.78′ W.	(*)
146	39°11.73′ N.	72°25.4′ W.	(*)
147	39°11.76′ N.	72°22.33′ W.	
148	39°19.08′ N.	72°9.56′ W.	(*)
149	39°25.17′ N.	72°13.03′ W.	(*)
150	39°28.8′ N.	72°17.39′ W.	(*)
151	39°30.16′ N.	72°20.41′ W.	(*)
152	39°31.38′ N.	72°23.86′ W.	(*)
153	39°32.55′ N.	72°25.07′ W.	(*)
154	39°34.57′ N.	72°25.18′ W.	(*)
155	39°34.53′ N.	72°24.23′ W.	(*)
156	39°33.17′ N.	72°24.1′ W.	(*)
157	39°32.07′ N.	72°22.77′ W.	(*)
158	39°32.17′ N.	72°22.08′ W.	(*)
159	39°30.3′ N.	72°15.71′ W.	(*)
160	39°29.49′ N.	72°14.3′ W.	(*)
161	39°29.44′ N.	72°13.24′ W.	(*)
162	39°27.63′ N.	72°5.87′ W.	(*)
163	39°28.26′ N.	72°2.2′ W.	(*)
164	39°29.88′ N.	72°3.51′ W.	(*)
165	39°30.57′ N.	72°3.47′ W.	(*)
166	39°31.28′ N.	72°2.63′ W.	(*)
167	39°31.46′ N.	72°1.41′ W.	(*)
168	39°37.15′ N.	71°55.85′ W.	(*)
169	39°39.77′ N.	71°53.7′ W.	(*)
170	39°41.5′ N.	71°51.89′ W.	
171	39°43.84′ N.	71°44.85′ W.	(*)
172	39°48.01′ N.	71°45.19′ W.	(*)
173	39°49.97′ N.	71°39.29′ W.	(*)
174	39°55.08′ N.	71°18.62′ W.	(*)
175	39°55.99′ N.	71°16.07′ W.	(*)
176	39°57.04′ N.	70°50.01′ W.	
177	39°55.07′ N.	70°32.42′ W.	
178	39°50.24′ N.	70°27.78′ W.	
179	39°42.18′ N.	70°20.09′ W.	
180	39°34.11′ N.	70°12.42′ W.	
181	39°26.04′ N.	70°4.78′ W.	
182	39°17.96′ N.	69°57.18′ W.	
183	39°9.87′ N.	69°49.6′ W.	
184	39°1.77′ N.	69°42.05′ W.	
185	38°53.66′ N.	69°34.53′ W.	
186	38°45.54′ N.	69°27.03′ W.	
187	38°37.42′ N.	69°19.57′ W.	
188	38°29.29′ N.	69°12.13′ W.	
189	38°21.15′ N.	69°4.73′ W.	
190	38°13′ N.	68°57.35′ W.	
191	38°4.84′ N.	68°49.99′ W.	
192	38°2.21′ N.	68°47.62′ W.	

(c) *Discrete Deep-Sea Coral Zones.*

(1) *Block Canyon.* Block Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

BLOCK CANYON

Point	Latitude	Longitude	Broad zone
1	39°55.08′ N.	71°18.62′ W.	(*)
2	39°55.99′ N.	71°16.07′ W.	(*)
3	39°49.51′ N.	71°12.12′ W.	
4	39°38.09′ N.	71°9.5′ W.	
5	39°37.4′ N.	71°11.87′ W.	
6	39°47.26′ N.	71°17.38′ W.	
7	39°52.6′ N.	71°17.51′ W.	
1	39°55.08′ N.	71°18.62′ W.	(*)

(2) *Ryan and McMaster Canyons.* Ryan and McMaster Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-sea Coral Zone, as defined in part (b) of this section.

RYAN AND MCMASTER CANYONS

Point	Latitude	Longitude	Broad zone
1	39°43.84′ N.	71°44.85′ W.	(*)
2	39°48.01′ N.	71°45.19′ W.	(*)
3	39°49.97′ N.	71°39.29′ W.	(*)
4	39°48.29′ N.	71°37.18′ W.	
5	39°42.96′ N.	71°35.01′ W.	
6	39°33.43′ N.	71°27.91′ W.	
7	39°31.75′ N.	71°30.77′ W.	
8	39°34.46′ N.	71°35.68′ W.	
9	39°40.12′ N.	71°42.36′ W.	
1	39°43.84′ N.	71°44.85′ W.	(*)

(3) *Emery and Uchupi Canyons.* Emery and Uchupi Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-sea Coral Zone, as defined in part (b) of this section.

EMERY AND UCHUPI CANYONS

Point	Latitude	Longitude	Broad zone
1	39°37.15′ N.	71°55.85′ W.	(*)
2	39°39.77′ N.	71°53.7′ W.	(*)
3	39°39.55′ N.	71°47.68′ W.	
4	39°30.78′ N.	71°36.24′ W.	
5	39°27.26′ N.	71°39.13′ W.	
6	39°28.99′ N.	71°45.47′ W.	
7	39°33.91′ N.	71°52.61′ W.	
1	39°37.15′ N.	71°55.85′ W.	(*)

(4) *Jones and Babylon Canyons.* Jones and Babylon Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-sea Coral Zone, as defined in part (b) of this section.

JONES AND BABYLON CANYONS

Point	Latitude	Longitude	Broad zone
1	39°28.26′ N.	72°2.2′ W.	(*)
2	39°29.88′ N.	72°3.51′ W.	(*)
3	39°30.57′ N.	72°3.47′ W.	(*)
4	39°31.28′ N.	72°2.63′ W.	(*)
5	39°31.46′ N.	72°1.41′ W.	(*)
6	39°30.37′ N.	71°57.72′ W.	
7	39°30.63′ N.	71°55.13′ W.	
8	39°23.81′ N.	71°48.15′ W.	
9	39°23′ N.	71°52.48′ W.	
1	39°28.26′ N.	72°2.2′ W.	(*)

(5) *Hudson Canyon.* Hudson Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

HUDSON CANYON

Point	Latitude	Longitude	Broad zone
1	39°19.08′ N.	72°9.56′ W.	(*)
2	39°25.17′ N.	72°13.03′ W.	(*)
3	39°28.8′ N.	72°17.39′ W.	(*)
4	39°30.16′ N.	72°20.41′ W.	(*)
5	39°31.38′ N.	72°23.86′ W.	(*)
6	39°32.55′ N.	72°25.07′ W.	(*)
7	39°34.57′ N.	72°25.18′ W.	(*)
8	39°34.53′ N.	72°24.23′ W.	(*)
9	39°33.17′ N.	72°24.1′ W.	(*)
10	39°32.07′ N.	72°22.77′ W.	(*)
11	39°32.17′ N.	72°22.08′ W.	(*)
12	39°30.3′ N.	72°15.71′ W.	(*)
13	39°29.49′ N.	72°14.3′ W.	(*)
14	39°29.44′ N.	72°13.24′ W.	(*)
15	39°27.63′ N.	72°5.87′ W.	(*)
16	39°13.93′ N.	71°48.44′ W.	
17	39°10.39′ N.	71°52.98′ W.	
18	39°14.27′ N.	72°3.09′ W.	
1	39°19.08′ N.	72°9.56′ W.	(*)

(6) *Mey-Lindenkohl Slope.* Mey-Lindenkohl Slope discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

MEY-LINDENKOHL SLOPE

Point	Latitude	Longitude	Broad zone
1	38°43′ N.	73°1.24′ W.	(*)
2	38°43.66′ N.	73°0.36′ W.	(*)
3	38°45′ N.	73°0.27′ W.	(*)
4	38°46.68′ N.	73°1.07′ W.	(*)
5	38°47.54′ N.	73°2.24′ W.	(*)
6	38°47.84′ N.	73°2.24′ W.	(*)
7	38°49.03′ N.	73°1.53′ W.	(*)
8	38°48.45′ N.	73°1′ W.	(*)
9	38°49.15′ N.	72°58.98′ W.	(*)
10	38°48.03′ N.	72°56.7′ W.	(*)
11	38°49.84′ N.	72°55.54′ W.	(*)
12	38°52.4′ N.	72°52.5′ W.	(*)
13	38°53.87′ N.	72°53.36′ W.	(*)
14	38°54.17′ N.	72°52.58′ W.	(*)
15	38°54.7′ N.	72°50.26′ W.	(*)
16	38°57.2′ N.	72°47.74′ W.	(*)
17	38°58.64′ N.	72°48.35′ W.	(*)
18	38°59.3′ N.	72°47.86′ W.	(*)
19	38°59.22′ N.	72°46.69′ W.	(*)
20	39°0.13′ N.	72°45.47′ W.	(*)
21	39°1.69′ N.	72°45.74′ W.	(*)
22	39°1.49′ N.	72°43.67′ W.	(*)
23	39°3.9′ N.	72°40.83′ W.	(*)
24	39°7.35′ N.	72°41.26′ W.	(*)
25	39°7.16′ N.	72°37.21′ W.	(*)
26	39°6.52′ N.	72°35.78′ W.	(*)
27	39°11.73′ N.	72°25.4′ W.	(*)
28	38°58.85′ N.	72°11.78′ W.	
29	38°32.39′ N.	72°47.69′ W.	
30	38°34.88′ N.	72°53.78′ W.	
1	38°43′ N.	73°1.24′ W.	(*)

(7) *Spencer Canyon.* Spencer Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

SPENCER CANYON

Point	Latitude	Longitude	Broad zone
1	38°34.14′ N.	73°11.14′ W.	(*)
2	38°35.1′ N.	73°10.43′ W.	(*)
3	38°35.94′ N.	73°11.25′ W.	(*)
4	38°37.57′ N.	73°10.49′ W.	(*)
5	38°37.21′ N.	73°9.41′ W.	(*)
6	38°36.72′ N.	73°8.85′ W.	(*)
7	38°36.59′ N.	73°8.25′ W.	
8	38°28.94′ N.	72°58.96′ W.	
9	38°26.45′ N.	73°3.24′ W.	
1	38°34.14′ N.	73°11.14′ W.	(*)

(8) *Wilmington Canyon.* Wilmington Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-sea Coral Zone, as defined in part (b) of this section.

WILMINGTON CANYON

Point	Latitude	Longitude	Broad zone
1	38°19.04′ N.	73°33.02′ W.	(*)
2	38°25.08′ N.	73°34.99′ W.	(*)
3	38°26.32′ N.	73°33.44′ W.	(*)
4	38°29.72′ N.	73°30.65′ W.	(*)
5	38°28.65′ N.	73°29.37′ W.	(*)
6	38°25.53′ N.	73°30.94′ W.	(*)
7	38°25.26′ N.	73°29.97′ W.	(*)
8	38°23.75′ N.	73°30.16′ W.	(*)
9	38°23.47′ N.	73°29.7′ W.	(*)
10	38°22.76′ N.	73°29.34′ W.	(*)
11	38°22.5′ N.	73°27.63′ W.	(*)
12	38°21.59′ N.	73°26.87′ W.	(*)
13	38°18.52′ N.	73°22.95′ W.	
14	38°14.41′ N.	73°16.64′ W.	
15	38°13.23′ N.	73°17.32′ W.	
16	38°15.79′ N.	73°26.38′ W.	
1	38°19.04′ N.	73°33.02′ W.	(*)

(9) *North Heyes and South Wilmington Canyons.* North Heyes and South Wilmington Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

NORTH HEYES AND SOUTH WILMINGTON CANYONS

Point	Latitude	Longitude	Broad zone
1	38°15.25′ N.	73°36.2′ W.	(*)
2	38°16.19′ N.	73°36.91′ W.	(*)
3	38°16.89′ N.	73°36.66′ W.	(*)
4	38°16.91′ N.	73°36.35′ W.	(*)
5	38°17.63′ N.	73°35.35′ W.	(*)
6	38°18.55′ N.	73°34.44′ W.	(*)
7	38°18.38′ N.	73°33.4′ W.	(*)
8	38°19.04′ N.	73°33.02′ W.	(*)
9	38°15.79′ N.	73°26.38′ W.	
10	38°14.98′ N.	73°24.73′ W.	
11	38°12.32′ N.	73°21.22′ W.	
12	38°11.06′ N.	73°22.21′ W.	
13	38°11.13′ N.	73°28.72′ W.	
1	38°15.25′ N.	73°36.2′ W.	(*)

(10) *South Vries Canyon.* South Vries Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

SOUTH VRIES CANYON

Point	Latitude	Longitude	Broad zone
1	38°6.35′ N.	73°44.8′ W.	(*)
2	38°7.5′ N.	73°45.2′ W.	(*)
3	38°9.24′ N.	73°42.61′ W.	(*)
4	38°3.22′ N.	73°29.22′ W.	
5	38°2.38′ N.	73°29.78′ W.	
6	38°2.54′ N.	73°36.73′ W.	
1	38°6.35′ N.	73°44.8′ W.	(*)

(11) *Baltimore Canyon.* Baltimore Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

BALTIMORE CANYON

Point	Latitude	Longitude	Broad zone
1	38°3.29′ N.	73°49.1′ W.	(*)
2	38°6.19′ N.	73°51.59′ W.	(*)
3	38°7.67′ N.	73°52.19′ W.	(*)
4	38°9.04′ N.	73°52.39′ W.	(*)
5	38°10.1′ N.	73°52.32′ W.	(*)
6	38°11.98′ N.	73°52.65′ W.	(*)
7	38°13.74′ N.	73°50.73′ W.	(*)
8	38°13.15′ N.	73°49.77′ W.	(*)
9	38°10.92′ N.	73°50.37′ W.	(*)
10	38°10.2′ N.	73°49.63′ W.	(*)
11	38°9.26′ N.	73°49.68′ W.	(*)
12	38°8.38′ N.	73°49.51′ W.	(*)
13	38°7.59′ N.	73°47.91′ W.	(*)
14	38°6.96′ N.	73°47.25′ W.	(*)
15	38°6.51′ N.	73°46.99′ W.	(*)
16	38°5.69′ N.	73°45.56′ W.	(*)
17	38°6.35′ N.	73°44.8′ W.	(*)
18	38°2.54′ N.	73°36.73′ W.	

BALTIMORE CANYON—Continued

Point	Latitude	Longitude	Broad zone
19	37°59.19′ N.	73°40.67′ W.	
1	38°3.29′ N.	73°49.1′ W.	(*)

(12) *Warr and Phoenix Canyon Complex.* Warr and Phoenix Canyon Complex discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

WARR AND PHOENIX CANYON COMPLEX

Point	Latitude	Longitude	Broad zone
1	37°53.68′ N.	73°57.41′ W.	(*)
2	37°55.07′ N.	73°57.27′ W.	(*)
3	38°3.29′ N.	73°49.1′ W.	(*)
4	37°59.19′ N.	73°40.67′ W.	
5	37° 52.5′ N.	73° 35.28′ W.	
6	37°50.92′ N.	73°36.59′ W.	
7	37°49.84′ N.	73°47.11′ W.	
1	37°53.68′ N.	73°57.41′ W.	(*)

(13) *Accomac and Leonard Canyons.* Accomac and Leonard Canyons discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

ACCOMAC AND LEONARD CANYONS

Point	Latitude	Longitude	Broad zone
1	37°45.15′ N.	74°7.24′ W.	(*)
2	37°45.88′ N.	74°7.44′ W.	(*)
3	37°46.7′ N.	74°5.98′ W.	(*)
4	37°49.62′ N.	74°6.03′ W.	(*)
5	37°51.25′ N.	74°5.48′ W.	(*)
6	37°51.99′ N.	74°4.51′ W.	(*)
7	37°51.37′ N.	74°3.3′ W.	(*)
8	37°50.63′ N.	74°2.69′ W.	(*)
9	37°49.62′ N.	74°2.28′ W.	(*)
10	37°50.28′ N.	74°0.67′ W.	(*)
11	37°50.2′ N.	74°0.17′ W.	
12	37°50.52′ N.	73°58.59′ W.	
13	37°50.99′ N.	73°57.17′ W.	
14	37°50.4′ N.	73°52.35′ W.	
15	37°42.76′ N.	73°44.86′ W.	
16	37°39.96′ N.	73°48.32′ W.	
17	37°40.04′ N.	73°58.25′ W.	
18	37°44.14′ N.	74°6.96′ W.	
1	37°45.15′ N.	74°7.24′ W.	(*)

(14) *Washington Canyon.* Washington Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

WASHINGTON CANYON

Point	Latitude	Longitude	Broad zone
1	37°22.74′ N.	74°26.24′ W.	(*)
2	37°22.87′ N.	74°26.16′ W.	(*)
3	37°24.44′ N.	74°28.57′ W.	(*)
4	37°24.67′ N.	74°29.71′ W.	(*)
5	37°25.93′ N.	74°30.13′ W.	(*)
6	37°27.25′ N.	74°30.2′ W.	(*)
7	37°28.6′ N.	74°30.6′ W.	(*)
8	37°29.43′ N.	74°30.29′ W.	(*)
9	37°29.53′ N.	74°29.95′ W.	(*)
10	37°27.68′ N.	74°28.82′ W.	(*)
11	37°27.06′ N.	74°28.76′ W.	(*)
12	37°26.39′ N.	74°27.76′ W.	(*)
13	37°26.3′ N.	74°26.87′ W.	(*)
14	37°25.69′ N.	74°25.63′ W.	(*)
15	37°25.83′ N.	74°24.22′ W.	(*)
16	37°25.68′ N.	74°24.03′ W.	(*)
17	37°25.08′ N.	74°23.29′ W.	
18	37°16.81′ N.	73°52.13′ W.	
19	37° 11.27′ N.	73° 54.05′ W.	
20	37° 15.73′ N.	74° 12.2′ W.	
1	37° 22.74′ N.	74° 26.24′ W.	(*)

(15) *Norfolk Canyon.* Norfolk Canyon discrete deep-sea coral zone is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request). An asterisk (*) in the Broad Zone column means the point is shared with the Broad Deep-Sea Coral Zone, as defined in part (b) of this section.

NORFOLK CANYON

Point	Latitude	Longitude	Broad zone
1	36°58.51′ N.	74°36.51′ W.	(*)
2	36°58.62′ N.	74°36.97′ W.	(*)
3	37°4.43′ N.	74°41.03′ W.	(*)
4	37°5.83′ N.	74°45.57′ W.	(*)
5	37°6.97′ N.	74°40.8′ W.	(*)
6	37°4.52′ N.	74°37.77′ W.	(*)
7	37°4.02′ N.	74°33.83′ W.	(*)
8	37°4.52′ N.	74°33.51′ W.	(*)
9	37°4.4′ N.	74°33.1′ W.	(*)
10	37°4.16′ N.	74°32.37′ W.	
11	37°4.4′ N.	74°30.5′ W.	
12	37°3.65′ N.	74°3.66′ W.	
13	36°57.75′ N.	74°3.61′ W.	
14	36°59.77′ N.	74°30′ W.	
15	36°58.23′ N.	74°32.95′ W.	
16	36°57.99′ N.	74°34.18′ W.	
1	36°58.51′ N.	74°36.51′ W.	(*)

(d) *Transiting.* Vessels may transit the Broad and Discrete Deep-Sea Coral Zones defined in paragraphs (b) and (c) of this section, provided bottom-tending trawl nets are out of the water and stowed on the reel and any other fishing gear that is prohibited in these areas is onboard, out of the water, and not deployed. Fishing gear is not required to meet the definition of "not available for immediate use" in § 648.2 of this part, when a vessel transits the Broad and Discrete Deep-Sea Coral Zones.

* * * * *

[FR Doc. 2016–23217 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 187
Tuesday, September 27, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Submission for OMB Review; Comment Request

September 22, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by October 27, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Forest Industries Data Collection System.

OMB Control Number: 0596–0010.

Summary of Collection: The Forest and Range Renewable Resources Planning Act of 1974 (Pub. L. 93–278), National Forest Management Act of 1976 (16 U.S.C. 1600), and the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307) amended by the Energy Security Act of 1980 (42 U.S.C. 8701) require the Forest Service (FS) to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of the resources. Forest product and other wood-using industries are important to state, regional, and national economies. In most southern states, the value of rounded timber products is ranked either first or second in relation to other major agricultural crops. The importance and value of the timber products industry is significant in other regions of the United States as well. The FS will collect information using questionnaires.

Need and Use of the Information: To monitor the types, species, volumes, sources, and prices of the timber products harvested throughout the Nation. Using the "Primary Mill Questionnaire" FS will collect industrial round wood information from the primary wood-using industries throughout the United States and from mills in Canada that directly receive wood from the United States. FS will also use the "Pulp & Board Forest Industries Questionnaire." The data will be used to develop specific economic development plans for a new forest-related industry in a State and to assist existing industries in identifying raw material problems and opportunity. The "Loggers Survey" will track information pertaining to the logging company to determine changes in the logging contractor workforce as a whole, not by individual company. This type of data is important in understanding the logging industry and its response to outside influences. If the information were not collected, data would not be available for sub-state, state, regional and national policy makers and program developers to make decisions related to the forestland on a scientific basis.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2,170.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 1,131.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–23275 Filed 9–26–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Sites; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Ottawa National Forest, USDA Forest Service.

ACTION: Notice of proposed new fee sites.

SUMMARY: The Ottawa National Forest is proposing new recreation fee sites. The Ottawa's proposal includes: A $100 day use fee for Clark Lake and Lake Ottawa group picnic buildings; a $5 daily or $30 annual fee for Black River picnic area and the Lake Ottawa day use area; and a $400 day use option for group use of Camp Nesbit, an organizational camp.

Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. These fees are proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements to the facilities within the recreation areas.

An analysis of nearby recreation facilities with similar amenities shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: Comments will be accepted through November 30, 2016. New fees would begin May 2017.

ADDRESSES: Linda L. Jackson, Forest Supervisor, Ottawa National Forest, E6248 Hwy. 2 East, Ironwood, MI 49938.

FOR FURTHER INFORMATION CONTACT: Lisa Klaus, Public Affairs Officer, 906–932–1330 extension 328. Information about these and other proposed fee changes can also be found on the Ottawa National Forest Web site: *http://www.fs.usda.gov/ottawa.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Clark Lake and Lake Ottawa group picnic sites are fully enclosed buildings that each hold up to 75 people. Both have recently been renovated with Clark Lake receiving new bathrooms and showers, and Lake Ottawa receiving updates to the water and wastewater systems.

Black River picnic area is a public access point for boaters to Lake Superior and is one of the most highly visited sites on the Forest. It has received a renovation to its water and wastewater systems with a renovation of the pavilion to be completed in 2016.

The day use fee for Camp Nesbit would cover use of the dining hall, recreation hall, beach, restroom and shower facilities, and archery range. Season dates for Camp Nesbit vary annually based on use and weather conditions, but generally range from mid-April through mid-October. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: September 21, 2016.

David M. Birdsall,

Acting Forest Supervisor.

[FR Doc. 2016–23254 Filed 9–26–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision for a currently approved information collection in support of the program for 7 CFR part 1927–B, Real Estate Title Clearance and Loan Closing.

DATES: Comments on this notice must be received by November 28, 2016.

FOR FURTHER INFORMATION CONTACT: Andrea Birmingham, Loan Specialist, USDA Rural Housing Service, Single Family Housing, 1400 Independence Avenue SW., STOP 0783, Washington, DC 20250–0783, Telephone: (202) 720–1489. Fax: 1 (844) 496–7795. Email: *Andrea.Birmingham@one.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) required that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Title: Real Estate Title Clearance and Loan Closing.

OMB Number: 0575–0147.

Expiration Date: February 28, 2017.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title clearance is required to assure the Agency(s) that the loan is legally secured and has the required lien priority.

RHS will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans are made with Federal funds are legally secured. The respondents are individuals or households, businesses and non-profit institutions. The information required is used by the USDA personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to ensure the program is administered in manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secure. RHS continually strives to ensure that information collection burden is kept to a minimum.

Estimate of Burden: Public burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Individuals or Households, Businesses, Closing agents/Attorneys and the field office staff.

Estimated Number of Respondents: 13,500.

Estimated Number of Responses per Respondent: 3.

Estimate Number of Responses: 40,450.

Estimated Total Annual Burden on Respondents: 3,925 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of the RHS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to Jeanne Jacobs, Regulation and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 19, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–23220 Filed 9–26–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Intent To Give Fourth Funding Priority to Loan Application Packages Received via an Intermediary Under the Certified Loan Application Packaging Process Within the Section 502 Direct Single Family Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: On May 19, 2016, the final rule for the certified loan application packaging process for the direct single family housing loan program became effective. See 80 FR 23673 (April 29, 2015) and 81 FR 8389 (February 19, 2016). The Administrator has the ability to temporarily reclassify applications received through the certified loan application packaging process as fourth funding priority when funds are insufficient to serve all program-eligible applicants, when determined appropriate. See 7 CFR 3550.55(c)(5).

In accordance with this regulatory allowance, the Administrator will grant fourth funding priority to loan application packages received via an Agency-approved intermediary when funds are insufficient to serve all program-eligible applicants. This reclassification will remain in effect until further notice via **Federal Register** notice. This reclassification does not apply to certified packaging bodies working without an intermediary.

DATES: This funding priority reclassification for loan application packages received via an Agency-approved intermediary is effective on September 27, 2016.

FOR FURTHER INFORMATION CONTACT: Tammy Repine, Finance and Loan Analyst, Single Family Housing Direct Loan Division, USDA Rural Development, 3625 93rd Avenue SW., Olympia, Washington 98512, Telephone: 360–753–7677. Email: *tammy.repine@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: This action is deemed appropriate since the activities performed by the Agency-approved intermediaries (*e.g.* quality assurance reviews on packaged loan applications; recruitment of certified packaging bodies; and supplemental training, technical assistance, and support to certified packaging bodies) enhance the work and goals of the Agency and benefit the low- and very low-income people who wish to achieve homeownership in rural areas by increasing awareness of the Agency's housing program, increasing specialized support available to complete the application for assistance, and improving the quality of loan application packages.

USDA Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW. 4, Washington, DC 20250–9410;

(2) *fax:* (202) 690–7442; or

(3) *email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: September 15, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–23218 Filed 9–26–16; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wisconsin Advisory Committee for a Meeting To Discuss Findings and Recommendations Resulting From the Committee's Study of Hate Crime in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Wisconsin Advisory Committee (Committee) will hold a meeting on Monday, November 07, 2016, at 12:00 p.m. CST for the purpose of discussing testimony received regarding hate crime in the state, in preparation to issue a civil rights report to the Commission on the topic.

DATES: The meeting will be held on Monday, November 07, 2016, at 12:00 p.m. CST.

Public Call Information: Dial: 888–397–5335, Conference ID: 8996006.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–397–5335, conference ID: 8996006. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov*. Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Wisconsin Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=282*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion of civil rights testimony:
  Hate Crime in Wisconsin
Public Comment
Future Plans and Actions
Adjournment

Dated: September 22, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–23267 Filed 9–26–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Proposed Revised Information Collection; Comment Request; Limited Access Death Master File Subscriber Certification Form

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The purpose of this notice is to allow for 60 days of public comment.

DATES: Written comments must be submitted on or before November 28, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John W. Hounsell, Business and Industry Specialist, Office of Product and Program Management, National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312, email: *jhounsell@ntis.gov* or telephone: 703–605–6184.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice informs the public that the National Technical Information Service (NTIS) is requesting approval of a revised information collection described in Section II for use in connection with the final rule for the "Certification Program for Access to the Death Master File." The final rule was published on June 1, 2016 (81 FR 34882), with the rule to become effective on November 28, 2016. The revised information collection described in Section II, if approved, will become effective on the effective date of the final rule.

II. Method of Collection

Title of Information Collection: "Limited Access Death Master File Subscriber Certification Form" (Certification Form).

Description of the need for the information and the proposed use: NTIS issued a final rule establishing a program through which persons may become eligible to obtain access to Death Master File (DMF) information about an individual within three years of that individual's death. The final rule was promulgated under Section 203 of the Bipartisan Budget Act of 2013, Public Law 113–67 (Act). The Act prohibits the Secretary of Commerce (Secretary) from disclosing DMF information during the three-year period following an individual's death (Limited Access DMF), unless the person requesting the information has been certified to access the Limited Access DMF pursuant to certain criteria in a program that the Secretary establishes. The Secretary delegated the authority to carry out Section 203 to the Director of NTIS.

Initially, on March 26, 2014, NTIS promulgated an interim final rule, establishing a temporary certification program (79 FR 16668) for persons who seek access to the Limited Access DMF. Subsequently, on December 30, 2014, NTIS issued a notice of proposed rulemaking (79 FR 78314). NTIS adjudicated the comments received, and, on June 1, 2016, published a final rule (81 FR 34822).

NTIS created the Certification Form used with the interim final rule for Persons and Certified Persons to provide information to NTIS describing the basis upon which they are seeking certification. In the notice of proposed rulemaking, NTIS discussed proposed revisions to the Certification Form (79 FR 78314 at 78320–21). The final rule requires that Persons and Certified Persons provide additional information to improve NTIS's ability to determine whether a Person or Certified Person meets the requirements of the Act (81 FR 34882).

III. Data

OMB Control Number: 0692–0013.

Form Number(s): NTIS FM161.

Type of Review: Revised information collection.

Affected Public: Members of the public seeking certification or renewal of certification for access to the Limited Access Death Master File under the final rule for the "Certification Program for Access to the Death Master File."

Estimated Number of Respondents: NTIS expects to receive approximately 560 applications and renewals for certification every year.

Estimated Time per Response: 2.5 hours.

Estimated Total Annual Burden Hours: 1,400 (560 applications × 2.5 hours = 1,400 hours).

Estimated Total Annual Cost to Public: NTIS expects to receive up to 560 applications annually at a fee of $1,575 per application, for a total cost of $882,000. This total annual cost reflects the cost to the Federal Government, which consists of the expenses associated with NTIS personnel reviewing and processing the revised Certification Form. In addition, NTIS expects that preparation of the application will require a senior administrative staff person 2.5 hours at a rate of $100/hour, for a total cost to the public of $140,000 (1,400 total burden hours × $100/hour = $140,000). NTIS estimates the total annual cost to the public to be $1,022,000 ($882,000 in fees + $140,000 in staff time = $1,022,000).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

PRA Departmental Lead, Office of the Chief Information Officer.

[FR Doc. 2016–23208 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2014]

Reorganization and Expansion of Foreign-Trade Zone 82 Under Alternative Site Framework; Mobile, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the City of Mobile, grantee of Foreign-Trade Zone 82, submitted an application to the Board (FTZ Docket B–30–2015, docketed May 1, 2015, revised September 1, 2016) for authority to reorganize and expand under the ASF with a service area of Mobile, Baldwin, Butler (portion), Choctaw (portion), Clarke, Conecuh, Escambia, Monroe, Washington and Wilcox (portion) Counties, in and adjacent to the Mobile Customs and Border Protection port of entry, to restore 80 acres at Site 1, and FTZ 82's existing Sites 1 (as modified), 2, 3, 4, 7, 9, 13 and 18 would be categorized as magnet sites and Sites 14, 15, 16, 17 and 19 would be categorized as usage-driven sites;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 26538–26539, May 8, 2015) and the revised application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and addendum report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The revised application to reorganize and expand FTZ 82 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to an ASF sunset provision for magnet sites that would terminate authority for Sites 2, 3, 4, 7, 9, 13 and 18 if not activated within five years from the month of approval, and to an ASF sunset provision for usage-driven sites that would terminate authority for Sites 14, 15, 16, 17 and 19 if no foreign-status merchandise is admitted for a *bona fide* customs purpose within three years from the month of approval.

Signed at Washington, DC, this 21st day of September 2016.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2016–23308 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2016]

Foreign-Trade Zone (FTZ) 21—Dorchester County, South Carolina; Notification of Proposed Production Activity; Volvo Car US Operations, Inc. (Motor Vehicles and Related Parts); Ridgeville, South Carolina

Volvo Car US Operations, Inc. (Volvo) submitted a notification of proposed production activity to the FTZ Board for its facility in Ridgeville, South Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 9, 2016.

A separate application by the South Carolina State Ports Authority, grantee of FTZ 21, for subzone designation at the Volvo facility will be submitted and processed under Section 400.31 of the Board's regulations. The facility is currently under construction and will be used for the production of motor vehicles and related parts. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Volvo from customs duty payments on the foreign-status components used in export production. On its domestic sales, Volvo would be able to choose the duty rates during customs entry procedures that apply to passenger motor vehicles, lithium-ion batteries for passenger motor vehicles, passenger motor vehicle bodies and stamped motor vehicle body parts (duty rates range between 2.5% and 3.4%) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: First aid kits; acrylic/vinyl paints; adhesives; polyurethane profile shapes/seals/plates/sheets/film; acoustic foams; foam absorbers; plastic connectors/fittings/tapes/decals/plates/sheets/film/caps/covers/plugs/anchors/handles/brackets/clamps/clips/covers/fasteners/guides/hinges/mountings/locks/knob handles/o-rings/cable ties/clamps/clips/cushions/emblems/nuts/plates/retainers/rivets/tubing/door lock parts; rubber tire sealants/threads/cords/plates/sheets/strip/gaskets/hoses/air filter ducts/tubes/belts/tires/mats/o-rings/seals/mouldings/absorbers/cushions/rings/bellows//mounts/rods/bushings; upholstery leather; leather cases/bags; felt paper and paperboards; light-weight coated paper; cardboard boxes; printed books/brochures/leaflets/manuals; felt strips; manmade fiber felt shapes; felt damping strips; netting of twines/ropes; manmade fiber twine, cordage, or rope nettings; nylon carpets; tufted other manmade textile carpets/mats; felt carpets; manmade fiber tufted and non-tufted carpets/mats; velcro straps; vent pads (polyester fleece); umbrellas; mineral wools; asbestos brake linings/pads; graphite or other carbon gaskets; glass; mirrors; sun visors; glass lenses; sound absorber/insulating articles of fiberglass; platinum catalysts; wood screws; steel butt weld fittings/flanges/gas containers; iron or steel coupling locks/wire/ropes/cables/roller chains/nails/screws/bolts/

studs/sockets/nuts/rivets/cotter pins/valves/keys/springs/hangers/clamps/clips/gaskets/o-rings; copper and steel pipe; copper suppression band assemblies/o-rings/nuts/screws/earthing strap hinge hatch assemblies; aluminum plates/sheets/strips/foil/rivets/blinds/nuts/exhaust gaskets/decals; wrenches; locks; blank keys; hinges; base metal gas springs/mountings/anchors/handles/braces/brackets/clips/locks/clamps/flange seals/gaskets/o-rings/cradles/throttle caps/frames/guide rails/nuts/plates/spacers; internal combustion engines; diesel engines; engine blocks/caps/valves/plugs/rings/rods/cylinder heads; telescoping linear acting hydraulic cylinders; linear acting cylinders; pumps (fuel injection, engine oil, transmission and coolant); brake fluid reservoirs; air conditioning (A/C) compressors; fan shrouds; vacuum pump inlet connectors; turbocharger pipes; heating ventilation air conditioning (HVAC) units; air conditioner parts; HVAC heat exchangers; oil coolers; oil filters; motor vehicle A/C accumulators; engine air filters; catalytic converters; filters; air filter inlets/housings/covers; fire extinguishers; washer fluid nozzles/reservoirs; jacks; winches; trunk lid spindle drives; cranks; USB hubs; dynamic stability or variable damper control devices; auxiliary air valves; solenoid valves; throttle housing/thermostat valves; plastic drain cocks; engine cooling system housings/thermostats; valve bodies and related parts; fuel injector valve parts; bearings; speedometer cables; crankshafts; camshafts; bearings; flywheels; engine belt tensioners; automatic transmission flexplates; carburetor repair kits; engine support mounts; liquid filled engine mounts; wiper motors; mirror drive units; wiper motors; electric motors; alternators; parts of fuel pumps; electric converters; electric chargers; power supplies; inductors; flexible permanent magnets; clutches with solenoid actuators; solenoids; lithium manganese dioxide batteries; primary batteries; lead-acid batteries; electric storage batteries; lithium-ion batteries/cell module parts; vacuum cleaners; spark plugs; starter motors; glow plugs; air conditioning generators/distributors/covers/traps; lights; reflectors; electric signals; motor vehicle horns; siren sensors; windshield wiper systems; headlight frames/inserts/mountings; baffles; control units; headlights; wiper arms; lamps; heater assemblies; electric heaters; seat cushion heaters; air inlets for intake air filters; cellular/wireless telephones; telematic infotainment head units and control modules; telematics assemblies; global positioning system (GPS) assemblies; microphones; loudspeakers; earphone module assemblies; amplifiers; speakers; speaker parts; CD changers/players; TV modules/assemblies; DVD ROMs; cameras; forward looking radar sensors; radio navigation equipment; radio remote controls; radios; tape players; CD players; video monitors; monitor assemblies; antennas; TV tuner modules; signal modules; active sound display modules; remote control key shells/covers; alarm systems; electromagnetic interference filter assemblies; suppression filter assemblies; electrical resistors and related parts; power units/sensors; spark plug connectors; fuses; cables; grounds; relays; switches; lamp holders; connectors; elbows; connectors/boxes terminals; control switches; housings for electrical/fuse boxes; bulbs; lamps; electrical filaments; parts of electrical filaments/lamps; light emitting diodes; diode parts; integrated circuits; cable harnesses; electric cables; harness cables; optic fiber cables; ignition lead holders; insulating fittings; trunk lid noise suppression filters; chassis fitted with engines; motor vehicle bodies; bumper covers/frames/grills/panels/rails/trims; door assemblies/shells/panels/guides/frames; dashboard assemblies; bracket assemblies; door lock rods; cross members; lower arms; panel supports; cargo partitions; brake drums/rotors/discs/pads/shoes/calipers/covers/shields; gear boxes; oil sumps; axles; shafts; aluminum wheels; steel wheels; wheel cap rings; shock absorbers; suspension anti-roll bars/baffles/struts/control arms/frames/springs/knobs/levers/supports/arms/knuckles/rollers; radiators and related parts; mufflers; exhaust pipes; clutches and related parts; steering wheels/columns/boxes; airbag modules; shafts; gear selectors; cables; carriers; flanges; knobs; sleeves; oil dipstick tubes; gear shifts; absorbers; air ducts/guides/inlets/shields/vents; anchors; battery boxes/casings/components/covers/shelves/trays; cables; brake pedals; brake lines; differential carriers; casings; textile child seat protector covers; plastic child seat protector covers; clutch pedals/assemblies; drive shafts; pedals; coolant pipes/coils; engine covers; textile sun shade curtains; plastic sun shade curtains; tow bars/hitches/hooks; dipsticks; drain plugs; engine casings/coolant pipes/feed lines/caps; plastic/aluminum/rubber floor mats; fuel feed lines/pipes/fillers/caps/hoses/housing filters/shields/rails/tanks/hoses; heat shields; hitches; manmade fiber cargo nets; pedal pads; lenses; signals; optical night vision camera; temperature sensors; fuel sensors/gauges; HVAC sensors; air flow sensors; gas temperature sensors; gas pressure sensors; oxygen sensors; exhaust sensors; night vision modules; sensor parts; instrument clusters; heads up display modules; instrument cluster parts; battery sensors; accelerometers; sensor rods; power take off (PTO) control units; voltage regulators/control units; dashboard clocks; seat sliding blocks; leather seats/arm rests/head rests and related parts; textile seats/arm rests/head rests and related parts; plastic seats/arm rests/head rests and related parts; textile child safety seat covers; illuminated signs; zipper sliders/zipper fasteners; and, cigarette lighters (duty rates range from duty-free to 12.5%).

The following foreign-sourced materials/components will be admitted to the proposed subzone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items: felt strips (HTSUS 5602.10); manmade fiber felt shapes (HTSUS 5602.90); felt damping strips (HTSUS 5602.90); netting of twines or ropes (HTSUS 5608.19); manmade fiber twine/cordage/rope nettings (HTSUS 5608.90); nylon carpets (HTSUS 5703.20); tufted other manmade textile carpets/mats (HTSUS 5703.30); felt carpets (HTSUS 5704.90); manmade fiber tufted and non-tufted carpets/mats (HTSUS 5705.00); velcro straps (HTSUS 5806.10); vent pads (polyester fleece) (HTSUS 5911.90); textile child seat protector covers (HTSUS 8708.99); textile sun shade curtains (HTSUS 8708.99); manmade fiber cargo nets (HTSUS 8708.99); textile seats/arm rests/head rests and related parts (HTSUS 9401.90); and, textile child safety seat covers (HTSUS 9401.90).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is November 7, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: September 20, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–23303 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967; C–570–968]

Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 26, 2016, the United States Court of International Trade (CIT or Court) sustained the Department of Commerce's (Department) final results of redetermination in which the Department determined, under protest, that Whirlpool Corporation's (Whirlpool) kitchen appliance door handles with plastic end caps (handles with end caps) are not covered by the scope of the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China.

DATES: *Effective:* September 5, 2016.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–3965.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2014, the Department issued a final scope ruling in which it determined that two types of kitchen appliance door handles imported by Whirlpool are within the scope of the *Orders* [1] and did not meet the scope exclusion for "finished merchandise" or "finished goods kits." [2] Whirlpool challenged the Department's final scope ruling at the CIT.

On February 1, 2016, in *Whirlpool I* the Court issued an opinion and order sustaining the Department's findings in the original scope ruling that Whirlpool's kitchen appliance door handles consisting of a single piece of extruded aluminum are within the scope of the *Orders* based on a plain reading of the scope language.[3] However, the Court remanded the Department's determination that the scope of the *Orders* covers handles consisting of a single piece of aluminum extrusion with plastic end caps fastened on with screws. The Court found that the general language of the scope did not support the Department's determination.[4] The Court further found that, assuming *arguendo* that Whirlpool's handles with end caps were covered by the general scope language, the Department erred in finding that the products did not satisfy the "finished merchandise" exclusion.[5]

On April 18, 2016, the Department issued its Final Results of Redetermination, in which it found that although it respectfully disagreed with the Court that Whirlpool's handles with end caps were not covered by the general scope language, it found under protest that Whirlpool's handles with end caps were outside the scope of the *Orders*.[6] As a result, the Department did not consider whether Whirlpool's handles with end caps were subject to the exclusion for "finished merchandise." [7]

On August 26, 2016, in *Whirlpool II* the Court sustained the Department's finding in the Final Results of Redetermination that Whirlpool's handles with plastic end caps are not covered by the scope of the *Orders*.[8] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (CAFC 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final scope ruling and is amending the final scope ruling to find that the handles with end caps imported by Whirlpool are not covered by the scope of the *Orders.*

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's August 26, 2016, judgment in *Whirlpool II* sustaining the Department's finding in the Final Results of Redetermination that Whirlpool's handles with end caps are not covered by the scope of the *Orders* constitutes a final decision of the Court that is not in harmony with the Whirlpool Kitchen Appliance Door Handles Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of Whirlpool's handles with end caps at issue pending expiration of the period for appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Scope Ruling

Because there is now a final court decision with respect to the Whirlpool Kitchen Appliance Door Handles Scope Ruling, the Department amends its final scope ruling and finds that the scope of the *Orders* does not cover Whirlpool's handles with end caps. The Department will instruct U.S. Customs and Border Protection (CBP) that the cash deposit rate will be zero percent for Whirlpool's handles with end caps. In the event the CIT's ruling is not appealed, or if appealed, upheld by the Federal Circuit, the Department will instruct CBP to liquidate entries of Whirlpool's handles with end caps without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: September 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–23305 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (the *Orders*).

[2] *See* "Final Scope Ruling on Whirlpool Kitchen Appliance Door Handles," dated August 4, 2014 (Whirlpool Kitchen Appliance Door Handles Scope Ruling).

[3] *See Whirlpool Corporation* v. *United States,* Court No. 14–00199, Slip Op. 16–8 (*Whirlpool I*), at 16–17.

[4] *Id.,* at 8–11.

[5] *Id.,* at 11–14.

[6] *See* Results Of Redetermination Pursuant To Court Remand, *Whirlpool Corp.* v. *United States,* Court No. 14–000199, Slip Op. 16–08 (CIT February 1, 2016) (Final Results of Redetermination).

[7] *Id.*

[8] *See Whirlpool Corporation* v. *United States,* Court No. 14–00199, Slip Op. 16–81 (*Whirlpool II*).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 160914846–6846–01]

Announcement of Requirements and Registration for National Institute of Standards and Technology Prize Competition—Federal Impact Assessment Challenge

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: In 2011, President Obama issued a Presidential Memorandum—*Accelerating Technology Transfer and Commercialization of Federal Research in Support of High-Growth Businesses*—which called on Federal agencies to establish performance goals, metrics, evaluation methods, and implementation plans to improve the effectiveness of Federal technology transfer activities. The President's charge has stimulated agency interest in studies that assess the impact of technologies transferred from Federal laboratories.

In an effort to encourage research in this area, the National Institute of Standards and Technology and the *Journal of Technology Transfer* present a Federal Impact Assessment (FIA) Challenge for researchers to develop impact studies of Federal technology transfer activities.

The FIA Challenge calls on researchers to perform original retrospective studies that assess the impact of federally developed technologies that (1) have been developed completely or in part by Federal researchers working at any Federal agency at any time over the past 30 years, and (2) have been transferred to an entity other than the agency which developed the technology.

DATES:

Submission Period: September 27, 2016–March 31, 2017.

Announcement of Winners: April 28, 2017.

The Submission Period begins September 27, 2016, at 9:00 a.m. Eastern Time (ET) and ends March 31, 2017, at 5:00 p.m. ET. Prize competition dates are subject to change at the discretion of NIST. Entries submitted before or after the Submission Period will not be reviewed or considered for award.

FOR FURTHER INFORMATION CONTACT: Changes or updates to the prize competition rules will be posted and can be viewed at the Event Web site, *https://www.challenge.gov/challenge/federal-impact-assessment-challenge.*

Questions about the prize competition can be directed to NIST via the Event Web site, *https://www.challenge.gov/challenge/federal-impact-assessment-challenge* or by email to Michael Walsh at *michael.walsh@nist.gov,* phone 301–975–5455.

Results of the prize competition will be announced on the Event Web site, *https://www.challenge.gov/challenge/federal-impact-assessment-challenge* and on the NIST Web site, *www.nist.gov.*

SUPPLEMENTARY INFORMATION:

FIA Challenge Sponsors

The National Institute of Standards and Technology (NIST; *www.nist.gov*) is a non-regulatory Federal agency within the United States Department of Commerce. Founded in 1901, NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST's Technology Partnerships Office (TPO) is part of NIST's Innovation and Industry Services directorate that is responsible for the NIST suite of partnership programs. TPO works with regional, state and local economic development organizations, technology incubation centers, public-private business development initiatives, and other organizations and partnerships, to facilitate the transfer of technologies developed within NIST laboratories to the private and nonprofit sectors through licensing and/or collaboration. NIST scientists conduct measurement science research, create technologies and make discoveries in nearly every scientific and technological field.

The *Journal of Technology Transfer* (*http://link.springer.com/journal/10961*), the official journal of the Technology Transfer Society, provides an international forum for the exchange of ideas that enhance and build an understanding of the practice of technology transfer. In particular, it emphasizes research on management practices and strategies for technology transfer. Moreover, the journal explores the external environment that affects these practices and strategies, including public policy developments, regulatory and legal issues, and global trends.

Eligibility Rules for Participating in the FIA Challenge

At the time of Entry, participants must meet the following Eligibility Rules:

The FIA Challenge is open to all individuals over the age of 18 that are residents of the 50 United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa, and to for-profit or non-profit corporations, institutions, or other validly formed legal entities organized or incorporated in, *and* which maintain a primary place of business in, any of the preceding jurisdictions. An individual, whether participating singly or with a group, must be a citizen or permanent resident of the United States.

Federal employees are not eligible to participate. Any individuals or legal entities that have received Federal funds for the development of any part of a submission are ineligible. Any other individuals or legal entities involved with the design, production, execution, distribution or evaluation of the FIA Challenge are also not eligible to participate.

A Participant shall not be deemed ineligible because the Participant consulted with Federal employees or used Federal facilities in preparing its submission to the FIA Challenge if the employees and facilities are made available to all Participants on an equitable basis. Note that while Federal employees may provide information to Participants, they are not obligated to respond to information requests within the time frame of this Challenge. The task of gathering information for this Challenge in a timely manner is the sole responsibility of the Participant.

To be eligible to win a Cash Award, a Participant (whether an individual or legal entity) must have registered to participate and must have complied with all requirements under section 3719 of title 15, United States Code ("Prize competitions").

Multiple entries are permitted. Each entry will be reviewed independently. Multiple individuals and/or legal entities may collaborate as a group to submit a single entry, in which case all members of the group must satisfy the eligibility requirements, and a single individual from the group must be designated as an official representative for each entry. That designated individual will be responsible for meeting all entry and evaluation requirements. Participation is subject to all U.S. federal, state and local laws and regulations. Individuals entering on behalf of or representing a company, institution or other legal entity are responsible for confirming that their entry does not violate any policies of that company, institution or legal entity.

Entry Process for Participants

To enter, visit the Event Web site, *https://www.challenge.gov/challenge/federal-impact-assessment-challenge.* Submit a Federal Impact Assessment (hereafter, "Paper") that meets the selection criteria described below.

The FIA Challenge calls on Participants to write an original Paper describing a retrospective assessment of the economic and/or societal impacts resulting from the transfer of a Federal technology developed completely or in part by Federal researchers working at any Federal agency at any time over the past 30 years.

For this FIA Challenge, "Federal technologies" are those techniques, machines, articles of manufacture, compositions of matter, methods, processes, tools, or works of authorship, whether or not patentable or copyrightable, that were invented or developed in whole or in part by one or more Federal employees during the course of their employment duties.

Transfer of a Federal technology (technology transfer) is the use of that technology by an entity outside of the agency where the Federal employee(s) was assigned. There are many different means by which the Federal government seeks to transfer technologies. Technologies can be transferred through formal agreements (*e.g.*, licenses, or Cooperative Research and Development Agreements) or through informal exchanges (*e.g.*, publications, conference presentations or informal collaborations).

Eligible technologies must meet two criteria, namely (1) the technology must have been developed in whole or in part by a Federal employee(s) during the course of his or her employment duties at any time over the past 30 years, and (2) the technology must have been transferred outside the Federal agency in a manner that can be traced back to that Federal agency. Technologies that have been developed entirely outside of a Federal agency or that have been developed entirely by non-Federal employees (even though with federal funding) are not eligible. Technologies that have not been transferred by a Federal agency are also not eligible. Information about federally transferred technologies and technology transfer success stories can be found on the Federal Laboratories Consortium (FLC) Web site at *www.federallabs.org.* For a list of Federal agencies that prepare annual technology transfer reports, see *http://nist.gov/tpo/publications/agency-technology-transfer-reports.cfm.*

For the FIA Challenge, it is envisioned that impacts of a given Federal technology(ies) are determined by an assessment of repercussions that have accrued to those who have either utilized Federal technologies in research or development activities, and/or consumed goods or services enabled by Federal technologies. The objective of the FIA Challenge is to develop metrics that measure economic and societal impacts. These metrics will then be available to stakeholders and policy makers to evaluate the net impact of federally developed technologies (*i.e.*, impact less development costs).[1] Impacts may be assessed at the local, regional, national, or global levels using economic data or other societal data (*e.g.*, measures of health, safety, or security). A variety of assessment methodologies could be used by Participants in this Challenge. Examples of commonly used approaches can be found in the citations provided by NIST online at *http://nist.gov/tpo/publications/other-economic-impact-related-studies.cfm.*

Papers submitted to this challenge that have previously been published or that have been prepared using Federal funds are not eligible (*e.g.*, Federal agency reports, reports prepared by Federally Funded Research and Development Centers, or reports prepared by funded intermediaries on behalf of Federal agencies.)

A complete Entry includes your Paper (including any figures, tables, and references), the email address of the Participant who is officially representing the Entry, and confirmation that you have read and agree to the Competition Rules contained in this Notice. Participants may provide submissions beginning at 9:00 a.m. ET on September 27, 2016, to the Event Web site. Submissions can be made no later than 5:00 p.m. ET on March 31, 2017, to the Event Web site.

Submissions before the start date and time, or after the end date and time, will not be evaluated or considered for award. Entries sent to NIST in any manner other than through the Event Web site will not be evaluated or considered for award. Entries that do not comply with the formatting requirements set forth in this Notice will not be evaluated or considered for award.

Entries must be complete, must contain no confidential information and must be in English.

In general, each Entry:

(a) must affirmatively represent that the Participant (and each Participant if more than one) has read and consents to be governed by the Competition rules and meets the eligibility requirements;

(b) must include an original Paper not prepared using Federal funds. Specifically, the Paper must:

1. Include the Participant(s) and the email address of the Participant who is officially representing the Entry.
2. include text, figures, tables and references that describes a retrospective impact assessment of a federally developed technology(ies),
3. be an original work not previously published in any media (*i.e.*, including but not limited to printed or otherwise reproduced text/graphics for sale or distribution to the public),
4. be a single file submitted in .doc, .docx, or .pdf format with text, figures, tables, and references contained within the Paper. There is no page limit,
5. provide an assessment of the economic and/or societal impacts of a technology or technologies that have been developed completely or in part by Federal researchers working at any Federal agency at any time over the past 30 years, and must have been transferred from a Federal agency,
6. provide a complete description of the impact methodology, including a description of the metrics used for the impact assessment. Citations of Federal technologies must be provided, for example by listing patent numbers, as well as citations of the transfer of the technologies to the private sector, for example by listing products and companies using licensed Federal technologies,
7. meet the Evaluation Criteria described below in the Evaluation, Judging, and Selection of Winner(s) sections, and
8. include original figures, tables, and text passages or, if any of these have been published elsewhere, Participants must have obtained written permission, at Participants' sole expense, from the copyright owner(s) for both the irrevocable use and distribution by NIST of the figure, tables, or text passages, in both print and online formats and evidence that such permission has been granted must be provided in the Paper. Any material received without such evidence will be assumed to originate from the authors;

(c) must include in a separate section on the title page of the Paper, an acknowledgement of any individuals, grants, funds, or other entities that provided support for the Paper. Participants must disclose all relationships or interests that could have direct or potential influence or impart bias on the work.

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[1] Note that the assessment of an agency's development cost for a given technology is not part of the FIA Challenge.

FIA Challenge Award(s)

The Prize Purse for the FIA Challenge is a total of $20,000. The Prize Purse may increase, but will not decrease. Any increases in the Prize Purse will be posted on the Event Web site and published in the **Federal Register**. The Prize Purse will be used to fund one or more awards.

NIST will announce via the Event Web site any Entry(ies) as to which the Judges have made a cash award (each, an "Award"). The anticipated number and amount of the Awards that will be awarded for this Competition is set forth in this **Federal Register** Notice; however, the Judges are not obligated to make all or any Awards, and reserve the right to award fewer than the anticipated number of Awards in the event an insufficient number of eligible Entries meet any one or more of the Judging Criteria for this Competition, based on the Judges' evaluation of the quality of Entries and in their sole discretion. Awards will be made based on the Judges' evaluation of an Entry's compliance with the Judging Criteria for this Competition. All potential winners will be notified by the email address provided in the submission document and may be required to complete further documentation confirming their eligibility. Return of any notification as "undeliverable" will result in disqualification. After verification of eligibility, Awards will be distributed in the form of a check or electronic funds transfer addressed to the official representative specified in the winning Entry. That official representative will have sole responsibility for further distribution of any Award among Participants in a group Entry or within a company or institution that has submitted an Entry through that representative. Each list of Entries receiving Awards for the Competition will be made public according to the timeline outlined on the Event Web site.

Winners are responsible for all taxes and reporting related to any Award received as part of the Competition.

All costs incurred in the preparation of Competition Entries are to be borne by Participants.

Evaluation, Judging, and Selection of Winner(s)

Submission Evaluation Criteria

This section discusses how Participant submissions will be evaluated.

Entry Submission and Review

The requirements for submission of a complete Entry are detailed in the section "Entry Process for Participants." Each Paper will be reviewed by up to three subject matter experts. Each subject matter expert will assess how well the Paper addressed each of the following evaluation criteria. For each criterion, subject matter experts will assign a numerical score and will provide a brief (50 to 100 word) assessment of how well that criterion was met.

Evaluation Criteria

1. Description of the technology. (20 points)

Papers must include a description of the technology being analyzed. In addition to describing the function and purpose of the technology, the description must also identify where and when the technology was developed, when the technology was transferred, and how the technology was transferred. Papers will be evaluated based on the presentation of a clear and adequate description of the technology being assessed.

2. Description of the demand environment. (30 points)

Papers must include a description of the demand environment. The demand environment is the environment in which the technology is utilized after it has been transferred from the agency. Papers should describe the types and number of individuals and/or organizations that utilize the technology. This should include researchers, consumers, and companies that make up the markets and industries affected. Papers will be evaluated based on the presentation of a clear and adequate description of the demand environment.

3. Description of methodologies used to gather and assess impact data. (20 points)

Papers must include a description of how impact data was gathered and assessed. This includes a description of all data sources, techniques used to clean, adjust or normalize data, and statistical methods employed. Papers will be evaluated based on the creativity and appropriateness of the methodology used to gather data and assess impacts.

4. Description of the economic and/or societal impacts that resulted from the technology transferred from the Federal agency. (30 points)

Papers must describe the economic and/or societal impact that resulted from the utilization of the technology once transferred from the agency. The description must be based on the evidence gathered and the statistical method(s) used to assess impacts in the demand environment. The description must include clearly defined metrics that allow for the benchmarking of impacts over time. Papers will be evaluated based on the degree to which reported impacts are presented in an accurate, unbiased, comprehensive, and convincing manner.

Up to 15 Papers will be selected for evaluation by the Judges. Selected papers will be the lesser of either (1) all papers with an average subject matter expert score of 70 or higher, or (2) the top 15 papers with the highest average subject matter expert scores.

A panel of three judges will then be convened to rank the selected Papers.

Judges will review each of the selected Papers and the corresponding reviews provided by subject matter experts. Judges will deliberate and then rank them using the following equally weighted Judging Criteria.

- Novelty of the Approach—The extent to which each Paper describes a new, creative, or innovative approach to capturing the impact of a Federally funded technology(ies).
- Scope of the Assessment—The extent to which each Paper addresses the scope of impact from the transfer of a Federally funded technology.
- Quality of the Paper—The extent to which each Paper present a high-quality, well-reasoned and compelling argument for capturing the impact of a federal funded technology(ies).

Participant(s) who submitted a Paper that is among the top four Papers ranked by the Judges will receive $5,000 and an invitation to have the Paper considered for publication in a special issue of *The Journal of Technology Transfer* ("Journal"), or another issue as determined by the Journal's editorial board. Participants accepting this invitation who submit their Paper to the Journal must comply with the Journal's "Instructions for Authors." (See: *http://www.springer.com/business+%26+management/journal/10961*)

Papers submitted will be peer-reviewed using the processes of the Journal, and acceptance for publication is wholly within the Journal's discretion, and is not guaranteed.

Subject Matter Experts and Judging Panel

Subject Matter Experts, to be selected by NIST, will, as a body, represent a high degree of experience with impact assessment and federally funded technologies. Subject Matter Experts will consist of Federal employees and will be subject matter experts in the technology field. Subject Matter Experts will not select winners of any awards.

The NIST Director will appoint a panel of highly qualified Judges. The Judging Panel will consist of three individuals who are experts in the field of assessing economic or societal impacts. Judges will deliberate and rank proposals according to the Judging Criteria described above. The top four proposals ranked by the Judges will be selected to receive an Award. Judges may not have personal or financial interests in, or be an employee, officer, director, or agent of, any entity that is a registered Participant in this Competition and may not have a familial or financial relationship with an individual who is a registered Participant. In the event of such a conflict, a Judge must recuse himself or herself. Should this occur a new Judge may be appointed to the panel.

Intellectual Property Rights

Other than as set forth herein, NIST does not make any claim to ownership of your Entry or any of your intellectual property or third party intellectual property that it may contain. By participating in the Competition, you are not granting any rights in any patents or pending patent applications related to your Entry; provided that by submitting an Entry, you are granting NIST certain limited rights as set forth herein.

By submitting an Entry, you grant to NIST the right to review your Entry as described above in the section "Entry Submission and Review," to describe your Entry in connection with any materials created in connection with the Competition and to have the Subject Matter Experts, Judges, Competition administrators, and the designees of any of them, review your Entry.

By submitting an Entry, you grant a non-exclusive, irrevocable, paid up right and license to NIST to use your name, likeness, biographical information, image, any other personal data submitted with your Entry and the contents in your Entry, in connection with the Federal Impact Assessment Challenge for any purpose, including promotion and advertisement of the Challenge and future challenges.

You agree that nothing in this Notice grants you a right or license to use any names or logos of NIST or the Department of Commerce, or any other intellectual property or proprietary rights of NIST or the Department of Commerce or their employees or contractors. You grant to NIST the right to include your name and your company or institution name and logo (if your Entry is from a company or institution) as a Participant on the Event Web site and in materials from NIST announcing winners of or Participants in the Competition. Other than these uses or as otherwise set forth herein, you are not granting NIST any rights to your trademarks.

If your Entry is selected as a Winner, you will be invited to submit your Paper for publication in the Journal of Technology Transfer. If you opt to submit your Paper to the Journal, you will enter into an agreement with the Journal and nothing in this Notice alters the peer review, publication, and other processes practiced by the Journal.

Entries containing any matter which, in the sole discretion of NIST, is indecent, defamatory, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, which promotes discrimination in any form, which shows unlawful acts being performed, which is slanderous or libelous, or which adversely affects the reputation of NIST, will not be accepted. If NIST, in its sole discretion, finds any Entry to be unacceptable, then such Entry shall be deemed disqualified and will not be evaluated or considered for award. NIST shall have the right to remove any content from the Event Web site in its sole discretion at any time and for any reason, including, but not limited to, any online comment or posting related to the Competition.

Confidential Information

By making a submission to the FIA Challenge, you agree that no part of your submission includes any confidential or proprietary information, ideas or products, including but not limited to information, ideas or products within the scope of the Trade Secrets Act, 18 U.S.C. 1905. Because NIST will not receive or hold any submitted materials "in confidence," it is agreed that, with respect to your Entry, no confidential or fiduciary relationship or obligation of secrecy is established between NIST and you, your Entry team, the company or institution you represent when submitting an Entry, or any other person or entity associated with any part of your Entry.

Warranties

By submitting an Entry, you represent and warrant that all information you submit is true and complete to the best of your knowledge, that you have the right and authority to submit the Entry on your own behalf or on behalf of the persons and entities that you specify within the Entry, and that your Entry (both the information and software submitted in the Entry and the underlying technologies or concepts described in the Entry):

(a) Is your own original work, or is submitted by permission with full and proper credit given within your Entry;

(b) does not contain confidential information or trade secrets (yours or anyone else's);

(c) does not knowingly, after due inquiry (including, by way of example only and without limitation, reviewing the records of the United States Patent and Trademark Office and inquiring of any employees and other professionals retained with respect to such matters), violate or infringe upon the patent rights, industrial design rights, copyrights, trademarks, rights in technical data, rights of privacy, publicity or other intellectual property or other rights of any person or entity;

(d) does not contain malicious code, such as viruses, malware, timebombs, cancelbots, worms, Trojan horses or other potentially harmful programs or other material or information;

(e) does not and will not violate any applicable law, statute, ordinance, rule or regulation, including, without limitation, United States export laws and regulations, including, but not limited to, the International Traffic in Arms Regulations and the Department of Commerce Export Regulations; and

(f) does not trigger any reporting or royalty or other obligation to any third party; and

(g) does not contain any statement that is abusive, defamatory, libelous, obscene, fraudulent, or is in any other way unlawful or in violation of applicable laws.

Limitation of Liability

By participating in the FIA Challenge, you agree to assume any and all risks and to release, indemnify and hold harmless NIST and the *Journal of Technology Transfer* from and against any injuries, losses, damages, claims, actions and any liability of any kind (including attorneys' fees) resulting from or arising out of your participation in, association with or submission to the FIA Challenge (including any claims alleging that your Entry infringes, misappropriates or violates any third party's intellectual property rights). In addition, you agree to waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from your participation in the FIA Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise.

NIST is not responsible for any miscommunications such as technical failures related to computer, telephone, cable, and unavailable network or server connections, related technical failures, or other failures related to hardware, software or virus, or incomplete or late Entries. Any compromise to the fair and proper conduct of the FIA Challenge may result in the disqualification of an Entry or Participant, termination of the FIA Challenge, or other remedial action, at the sole discretion of NIST. NIST reserves the right in its sole discretion to extend or modify the dates of the FIA Challenge, and to change the terms set forth herein governing any phases taking place after the effective date of any such change. By entering, you agree to the terms set forth herein and to all decisions of NIST and/or all of their respective agents, which are final and binding in all respects.

NIST is not responsible for: (1) Any incorrect or inaccurate information, whether caused by a Participant, printing errors, or by any of the equipment or programming associated with or used in the FIA Challenge; (2) unauthorized human intervention in any part of the Entry Process for the FIA Challenge; (3) technical or human error that may occur in the administration of the FIA Challenge or the processing of Entries; or (4) any injury or damage to persons or property that may be caused, directly or indirectly, in whole or in part, from a Participant's participation in the FIA Challenge or receipt or use or misuse of an Award. If for any reason an Entry is confirmed to have been deleted erroneously, lost, or otherwise destroyed or corrupted, the Participant's sole remedy is to submit another Entry in the FIA Challenge.

Termination and Disqualification

NIST reserves the authority to cancel, suspend, and/or modify the FIA Challenge, or any part of it, if any fraud, technical failures, or any other factor beyond NIST's reasonable control impairs the integrity or proper functioning of the FIA Challenge, as determined by NIST in its sole discretion.

NIST reserves the right to disqualify any Participant or Participant team it believes to be tampering with the Entry process or the operation of the FIA Challenge or to be acting in violation of any applicable rule or condition.

Any attempt by any person to undermine the legitimate operation of the FIA Challenge may be a violation of criminal and civil law, and, should such an attempt be made, NIST reserves the authority to seek damages from any such person to the fullest extent permitted by law.

Verification of Potential Winner(s)

All potential winners are subject to verification by NIST, whose decisions are final and binding in all matters related to the FIA Challenge.

Potential winner(s) must continue to comply with all terms and conditions of the FIA Challenge Rules described in this notice, and winning is contingent upon fulfilling all requirements. In the event that a potential winner, or an announced winner, is found to be ineligible or is disqualified for any reason, NIST may make an award, instead, to another Participant.

Privacy and Disclosure Under FOIA

Except as provided herein, information submitted throughout the FIA Challenge will be used only to communicate with Participants regarding Entries and/or the FIA Challenge. Participant Entries and submissions to the FIA Challenge may be subject to disclosure under the Freedom of Information Act ("FOIA").

Authority: 15 U.S.C. 3719.

Phillip Singerman,

Associate Director for Innovations and Industry Services.

[FR Doc. 2016–23239 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[0648–XE710]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle Launch Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letters of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Alaska Aerospace Corporation (AAC) for authorization to take marine mammals incidental to conducting space vehicle launch operations over the course of five years, from February 1, 2017 through January 31, 2022. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the AAC's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the AAC's application and request.

DATES: Comments and information must be received no later than October 27, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. 1315 East-West Highway, Silver Spring, MD 20910–3225 and electronic comments should be sent *ITP.Egger@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/research.htm* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the AAC's application may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing the document, please call the contact listed above.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made and regulations are issued.

Incidental taking shall be allowed if NMFS finds that the taking will have a negligible impact on the species or stock(s) affected and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR

216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 14, 2016, NMFS received an adequate and complete application from the AAC requesting authorization for the take of marine mammals incidental to space vehicle and missile launch activities from the Pacific Spaceport Complex Alaska (PSCA) for a period of five years. Space vehicle and missile launch activities have the potential to result in take of pinnipeds on nearby haul outs. Therefore, AAC requests authorization to take marine mammals that may occur in these areas, including Steller sea lions (*Eumatopias jubatus*) and harbor seals (*Phoca vitulina richardii*).

Specified Activities

AAC is proposing to launch small to medium space launch vehicles from the PSCA. PSCA may also launch a number of smaller missile systems, such as tactical or target vehicles. AAC anticipates the ability to accommodate nine launches per year.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning AAC's request (see **ADDRESSES**). Comments should be supported by data or literature citations as appropriate. We will consider all relevant information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by AAC, if appropriate.

Dated: September 20, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–23257 Filed 9–26–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0104]

Agency Information Collection Activities; Comment Request; Measures and Methods for the National Reporting System for Adult Education

AGENCY: Department of Education (ED), Office of Career, Technical, and Adult Education (OCTAE)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 28, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0104. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact John LeMaster, 202–245–6218.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Measures and Methods for the National Reporting System for Adult Education.

OMB Control Number: 1830–0027.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 5,700.

Abstract: Title II of the Workforce Innovation and Opportunity Act of 2014 (WIOA—Pub. L. 113–128), entitled the Adult Education and Family Literacy Act (AEFLA), was enacted on July 22, 2014. AEFLA creates a partnership among the Federal government, States, and localities to provide, on a voluntary basis, adult education and literacy services. Section 116 of WIOA requires States and Local Areas that operate the six core programs of the workforce development system to comply with common performance accountability requirements for those programs. In addition to the WIOA Joint Performance ICR, ED's Office of Career, Technical, and Adult Education (OCTAE) has modified its previously-approved ICR, used by States for performance reporting under the Workforce Investment Act of 1998 (WIA) through the National Reporting System for Adult Education (NRS ICR), to conform to the new requirements under WIOA. The NRS ICR obtains aggregate data annually from States using a set of data tables developed by ED (OMB Control No. 1830–0027).

Through this proposal, the Department is submitting a revised NRS ICR to include additional data collection elements consistent with the WIOA performance accountability requirements for the AEFLA program. These new requirements will become effective July 1, 2017. Thus, for purposes of the AEFLA program, States will be required to complete and submit annually to OCTAE the WIOA Annual Statewide Performance Report Template (in the Joint Performance ICR) and the aggregate data tables in the revised NRS ICR under OMB Control No. 1830–0027.

This revised NRS ICR contains 17 tables, two of which are required only for States that offer distance education; one optional table; two financial reports; one narrative report; and one data quality checklist. These tables and report forms are included in the document titled "Adult Education and Family Literacy Act (AEFLA) Reporting Tables." States include in the tables all participants in programs (1) that meet the purposes of AEFLA, and (2) for which expenditures are reported on the Federal Financial Report. In June 2016, OMB approved the data collection required by AEFLA (OMB 1830–0027) by approving non-substantive changes that conformed to the performance accountability requirements in WIOA section 116. OCTAE is requesting an extension of this approval, with proposed minor changes in order to obtain a more accurate reporting of participants served in the various AEFLA activities, services, and programs that support the purposes of AEFLA. These minor enhancements will increase the efficiency of the data collection process and ensure the quality of the data that States report.

Dated: September 22, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–23265 Filed 9–26–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–184–C]

Application To Export Electric Energy; Morgan Stanley Capital Group Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Morgan Stanley Capital Group Inc. (Applicant or MSCG) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before October 27, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On December 7, 2011, DOE issued Order No. EA–184–B to MSCG, which authorized the Applicant to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expires on December 7, 2016. On September 14, 2016, MSCG filed an application with DOE for renewal of the export authority contained in Order No. EA–184 for an additional five-year term.

In its application, MSCG states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that MSCG proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning MSCG's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–184–C. An additional copy is to be provided directly to Edward J. Zabrocki, Morgan Stanley & Co. LLC, 1585 Broadway, 3rd Floor, New York, NY 10036 and Allison E. Speaker, Sutherland Asbill & Brennan LLP, 700 Sixth Street NW., Suite 700, Washington, DC 20001.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on September 21, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–23273 Filed 9–26–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–117–000]

Vote Solar and Montana Environmental Information Center; Notice of Petition for Enforcement

Take notice that on September 19, 2016, Vote Solar and Montana Environment Information Center (collectively, Vote Solar) filed a petition for enforcement pursuant to section 210 of Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3. Vote Solar asserts that Montana Public Service Commission violated PURPA by suspending the standard rate for solar qualifying facilities with a nameplate capacity between 100 kW and 3 MW, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 11, 2016.

Dated: September 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23238 Filed 9–26–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP16–498–000; PF16–4–000]

Columbia Gas Transmission, LLC; Notice of Application

Take notice that on September 9, 2016, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting authorization to: (i) Abandon in place 17.5 miles of its Line B–105, (ii) replace 14 miles of its Line B–111, (iii) replace 0.1 miles of its Line B–121, (iv) replace 0.5 miles of its Line B–130, (v) install 7.6 miles of Line K–270 pipeline, and (vi) remove or install various appurtenances, all located in Fairfield and Franklin Counties, Ohio. Columbia states that there will be no change in certificated capacity. Columbia estimates the cost of the proposed project to be approximately $182,773,707, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning these applications may be directed to Tyler R. Brown, Senior Counsel, Columbia Gas Transmission, LLC, 5151 San Felipe, Suite 2500, Houston, Texas 77056, by telephone at (713) 386–3797.

On March 10, 2016, the Commission staff granted Columbia's request to utilize the Pre-Filing Process and assigned Docket No. PF16–4–000 to staff activities involved in the above referenced project. Now, as of the filing of the September 9, 2016 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP16–498–000 as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: October 12, 2016.

Dated: September 21, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23233 Filed 9–26–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8008–000]

Hastings, Michael W.; Notice of Filing

Take notice that on September 19, 2016, Michael W. Hastings submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45, and Order No. 664.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 11, 2016.

Dated: September 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23235 Filed 9–26–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] *Commission Authorization to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–10–000; Docket No. CP16–13–000]

Mountain Valley Pipeline LLC, Equitrans LP; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Mountain Valley Project and Equitrans Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the projects proposed by Mountain Valley Pipeline LLC (Mountain Valley) and Equitrans LP (Equitrans) in the above-referenced dockets. Mountain Valley requests authorization to construct and operate certain interstate natural gas facilities in West Virginia and Virginia, known as the Mountain Valley Project (MVP) in Docket Number CP16–10–000. The MVP is designed to transport about 2 billion cubic feet per day (Bcf/d) of natural gas from production areas in the Appalachian Basin to markets in the Mid-Atlantic and Southeastern United States. Equitrans requests authorization to construct and operate certain natural gas facilities in Pennsylvania and West Virginia, known as the Equitrans Expansion Project (EEP) in Docket No. CP16–13–000. The EEP is designed to transport about 0.4 Bcf/d of natural gas, to improve system flexibility and reliability, and serve markets in the Northeast, Mid-Atlantic, and Southeast, through interconnections with various other interstate systems, including the proposed MVP.

The draft EIS assesses the potential environmental effects of the construction and operation of the MVP and EEP in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the MVP and EEP would have some adverse environmental impacts; however, these impacts would be reduced with the implementation of Mountain Valley's and Equitrans' proposed mitigation measures, and the additional measures recommended by the FERC staff in the EIS.

The United States Department of Agriculture Forest Service (FS), U.S. Army Corps of Engineers (COE), U.S. Environmental Protection Agency, U.S. Department of the Interior Bureau of Land Management (BLM), U.S. Department of Transportation, West Virginia Department of Environmental Protection, and West Virginia Division of Natural Resources participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposals and participated in the NEPA analysis. The BLM, COE, and FS may adopt and use the EIS when they consider the issuance of a Right-of-Way Grant to Mountain Valley for the portion of the MVP that would cross federal lands. Further, the FS may use the EIS when it considers amendments to its Land and Resource Management Plan (LRMP) for the proposed crossing of the Jefferson National Forest. Although the cooperating agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective permit authorizations and Records of Decision (ROD) for the projects.

Proposed Facilities

The draft EIS addresses the potential environmental effects of the construction and operation of the proposed facilities. For the MVP, facilities include:

- About 301 miles of new 42-inch-diameter pipeline extending from the new Mobley Interconnect in Wetzel County, West Virginia to the existing Transcontinental Gas Pipe Line Company LLC (Transco) Station 165 in Pittsylvania County, Virginia;
- 3 new compressor stations (Bradshaw, Harris, Stallworth) in West Virginia, totaling about 171,600 horsepower (hp);
- 4 new meter and regulation stations and interconnections (Mobley, Sherwood, WB, and Transco);
- 2 new taps (Webster and Roanoke);
- 5 pig[1] launchers and receivers; and
- 36 mainline block valves.

For the EEP, facilities include:

- About 8 miles total of new various diameter pipelines in six segments;

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[1] A "pig" is a device used to clean or inspect the interior of a pipeline.

- new Redhook Compressor Station, in Greene County, Pennsylvania, with 31,300 hp of compression;
- 4 new taps (Mobley, H–148, H–302, H–306) and 1 new interconnection (Webster);
- 4 pig launchers and receivers; and
- decommissioning and abandonment of the existing 4,800 hp Pratt Compressor Station in Greene County, Pennsylvania.

Actions of the Bureau of Land Management and the Forest Service

The BLM's purpose and need for the proposed action is to respond to a Right-of-Way Grant application submitted by Mountain Valley on April 5, 2016. Under the Mineral Leasing Act of 1920 the Secretary of the Interior has delegated authority to the BLM to grant a right-of-way in response to the Mountain Valley application for natural gas transmission on federal lands under the jurisdiction of two or more federal agencies. Before issuing the Right-of-Way Grant, the BLM must receive the written concurrence of the other surface managing federal agencies (*i.e.,* FS and COE) in accordance with Title 43 Code of Federal Regulations (CFR) Part 2882.3(i). Through this concurrence process, the FS and COE would submit to the BLM any specific stipulations applicable to their lands, facilities, waterbodies, and easements for inclusion in the Right-of-Way Grant.

The FS's purpose and need for the proposed action is to consider issuing a concurrence to the BLM for the Right-of-Way Grant and to evaluate the amendments to the LRMP for the Jefferson National Forest that would make provision for the MVP pipeline if the FS decides to concur and BLM decides to issue a Right-of-Way Grant.

The first type of LRMP amendment would be a "plan-level amendment" that would change land allocations. This would change future management direction for the lands reallocated to the new management prescription (Rx) and is required by LRMP Standard FW–248.

Proposed Amendment 1: The LRMP would be amended to reallocate 186 acres to the Management Prescription 5C—Designated Utility Corridors from these Rxs: 4J—Urban/Suburban Interface (56 acres); 6C—Old Growth Forest Communities-Disturbance Associated (19 ac); and 8A1—Mix of Successional Habitats in Forested Landscapes (111 acres).

Rx 5C—Designated Utility Corridors contain special uses which serve a public benefit by providing a reliable supply of electricity, natural gas, or water essential to local, regional, and national economies. The new Rx 5C land allocation would be 500 feet wide (250 feet wide on each side of the pipeline), with two exceptions: (1) The area where the pipeline crosses Rx 4A—Appalachian National Scenic Trail Corridor would remain in Rx 4A; and (2) the new 5C area would not cross into Peters Mountain Wilderness so the Rx 5C area would be less than 500 feet wide along the boundary of the Wilderness.

The second type of amendment would be a "project-specific amendment" that would apply only to the construction and operation of this pipeline. The following amendments would grant a temporary 'waiver' to allow the project to proceed. These amendments would not change LRMP requirements for other projects or authorize any other actions.

Proposed Amendment 2: The LRMP would be amended to allow construction of the MVP pipeline to exceed restrictions on soil conditions and riparian corridor conditions as described in LRMP standards FW–5, FW–9, FW–13, FW–14 and 11–017, provided that mitigation measures or project requirements agreed upon by the Forest Service are implemented as needed.

Proposed Amendment 3: The LRMP would be amended to allow the removal of old growth trees within the construction corridor of the MVP pipeline. (reference LRMP Standard FW–77)

Proposed Amendment 4: The LRMP would be amended to allow the MVP pipeline to cross the Appalachian National Scenic Trail (ANST) on Peters Mountain. The Scenic Integrity Objective (SIO) for the Rx 4A area and the ANST will be changed from High to Moderate. This amendment also requires the SIO of Moderate to be achieved within five to ten years following completion of the project to allow for vegetation growth. (reference LRMP Standards 4A–021 and 4A–028).

The decision for a Right-of-Way Grant across federal lands would be documented in a ROD issued by the BLM. The BLM's decision to issue, condition, or deny a right-of-way would be subject to BLM administrative review procedures established in 43 CFR 2881.10 and Section 313(b) of the Energy Policy Act. The FS concurrence to BLM to issue the Right-of-Way Grant would not be a decision subject to NEPA, and therefore would not be subject to FS administrative review procedures. The FS would issue its own ROD for the LRMP amendments. The Forest Supervisor for the Jefferson National Forest would be the Responsible Official for the LRMP amendments. Proposed Amendment 1 was developed in accordance to 36 CFR 219 (2012 version) regulations and would be subject to the administrative review procedures under 36 CFR 219 Subpart B. Proposed Amendments 2, 3 and 4 were developed in accordance to 36 CFR 219 (2012) regulations but would be subject to the administrative review procedures under 36 CFR 218 regulations Subparts A and B, per 36 CFR 219.59(b).

The BLM is requesting public comments on the issuance of a Right-of-Way Grant that would allow the MVP pipeline to be constructed on federal lands managed by the FS and COE. The FS is requesting public comments on the consideration of submitting a concurrence to BLM and the draft amendments of the LRMP to allow the MVP pipeline to cross the Jefferson National Forest. All comments must be submitted to the FERC, the lead federal agency, within the timeframe stated in this Notice of Availability. Refer to Docket CP16–10–000 (MVP) in all correspondence to ensure that your comments are correctly filed in the record. You may submit comments to the FERC using one of the four methods listed below in this notice. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that the entire text of your comments—including your personal identifying information—would be publicly available through the FERC eLibrary system, if you file your comments with the Secretary of the Commission.

Distribution and Comments on the Draft Environmental Impact Statement

The FERC staff mailed copies of the draft EIS to federal, state, and local government representatives and agencies; elected officials; regional environmental groups and non-governmental organizations; potentially interested Native Americans and Indian tribes; affected landowners; local newspapers and libraries; parties to this proceeding; and members of the public who submitted comments about the projects. Paper copy versions of this draft EIS were mailed to those specifically requesting them; all others received a compact-disc version. In addition, the draft EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*).[2] A limited number of copies are available for distribution and public inspection at: Federal Energy

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[2] Go to "Documents & Filings," click on "eLibrary," use "General Search" and put in the Docket numbers (CP16–10 or CP16–13) and date of issuance (09/16/16).

Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before December 22, 2016.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents & Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents & Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–10–000 or CP16–13–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public sessions its staff will conduct in the project area to receive verbal comments on the draft EIS. To ensure that interested parties have ample opportunity to attend, the FERC staff has arranged for seven public sessions, at venues spaced a reasonable driving distance apart, and scheduled as listed below.

There will not be a formal presentation by Commission staff at any of the seven public comment sessions, although a format outline handout will be made available. All public sessions will begin at 5:00 p.m. Eastern time. If you wish to provide verbal comments, the Commission staff will hand out numbers in the order of your arrival, and will discontinue handing them out at 8:00 p.m. Comments will be taken until 10:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 8:00 p.m.

The primary goal of the public sessions is to allow individuals to provide verbal comments on the draft EIS. Individual verbal comments will be taken on a one-on-one basis with a stenographer (with FERC staff or representative present), called up in the order of the numbers received. Because we anticipate considerable interest from concerned citizens, this format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted. If many people are interested in providing verbal comments in the one-on-one setting at any particular session, a time limit of 3 minutes may be implemented for each commenter.

Your verbal comments will be recorded by the stenographer. Transcripts of all comments from the sessions will be placed into the dockets for the projects, which are accessible for public viewing on the FERC's Web site (at *www.ferc.gov*) through our eLibrary system.

FERC SPONSORED PUBLIC SESSIONS IN THE PROJECT AREA TO TAKE COMMENTS ON THE DRAFT EIS

Date	Location [a]
Tuesday, November 1, 2016	Chatham High School, 100 Cavalier Circle, Chatham, VA 24531, 434–432–8305.
Tuesday, November 1, 2016	Lewis County High School, 205 Minuteman Drive, Weston, WV 26452, 304–269–8315.
Wednesday, November 2, 2016	Franklin County High School, 700 Taynard Road, Rocky Mount, VA 24151, 540–483–0221.
Wednesday, November 2, 2016	Nicholas County High School, 30 Grizzly Road, Summersville, WV 26651, 304–872–2141.
Thursday, November 3, 2016	Sheraton Hotel, 2801 Hershberger Road, Roanoke, VA 24017, 540–563–9300.
Thursday, November 3, 2016	Peterstown Elementary School, 108 College Drive, Peterstown, WV 24963, 304–753–4328.
Wednesday, November 9, 2016	California Area High School, 11 Trojan Way, Coal Center, PA 15423, 724–785–5800.

[a] While we have agreements with the venues, contracts have not yet been finalized with the individual Boards of Education. If a School Board declines to sign the contract, the venue may change and the FERC would issue a revised notice to announce the replacement venue.

Commission staff will be available at each venue of the public sessions to answer questions about our environmental review process. It is important to note that written comments mailed to the Commission and those submitted electronically are reviewed by staff with the same scrutiny and consideration as the verbal comments given at the public sessions.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214).[3] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*). The eLibrary link provides access to all documents filed in a docket, in addition to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. Go to "Documents & Filings," click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the field (*i.e.*, CP16–10). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659.

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[3] See the previous discussion on the methods for filing comments.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: September 16, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23237 Filed 9–26–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8007–000]

Burke, John J., Jr.; Notice of Filing

Take notice that on September 19, 2016, John J. Burke, Jr. submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45, and Order No. 664.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 11, 2016.

Dated: September 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23234 Filed 9–26–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8009–000]

Williamson, Belvin, Jr.; Notice of Filing

Take notice that on September 19, 2016, Belvin Williamson, Jr. submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45, and Order No. 664.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 11, 2016.

Dated: September 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–23236 Filed 9–26–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2016–0135; EPA–R05–OAR–2016–0269; EPA–R05–OAR–2016–0372; EPA–R05–OAR–2016–0396; FRL–9953–10–Region 5]

Adequacy Status of the Cleveland-Akron-Lorain and Columbus, Ohio Areas and the Ohio and Indiana Portions of the Cincinnati Indiana-Ohio-Kentucky Area Submitted 8-Hour Ozone Redesignation Requests and Maintenance Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, the Environmental Protection Agency (EPA) is notifying the public that we have found that the motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Cleveland-Akron-Lorain and Columbus, Ohio ozone nonattainment areas, and the Indiana and Ohio portions of the Cincinnati Indiana-Ohio-Kentucky ozone nonattainment area are adequate for use in transportation conformity determinations under the Clean Air Act (CAA). Ohio submitted redesignation

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[1] *Commission Authorization to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

[1] *Commission Authorization to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

requests and maintenance plans for the Cleveland-Akron-Lorain and Columbus areas on July 6, 2016 and June 16, 2016, respectively. Ohio submitted a redesignation request and maintenance plan for the Ohio portion of the Cincinnati area on April 21, 2016. Indiana submitted a redesignation request and maintenance plan for the Indiana portion of the Cincinnati area on February 23, 2016. As a result of our finding, these areas must use their submitted MVEBs for future transportation conformity determinations.

DATES: This finding is effective October 12, 2016.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Control Strategies Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us" or "our" is used, we mean EPA.

Background

Today's notice is an announcement of a finding that we have already made. On August 23, 2016, EPA sent letters to the Indiana Department of Environmental Management and the Ohio Environmental Protection Agency transmitting our determination that the 2020 and 2030 MVEBs contained in the redesignations and maintenance plans for the Cleveland and Columbus, Ohio areas and Indiana and Ohio portions of the Cincinnati area are adequate for transportation conformity purposes. These MVEBs were announced on EPA's transportation conformity Web site, and no comments were submitted in response. The information is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

The Cleveland-Akron-Lorain ozone nonattainment area consists of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit Counties. The Columbus ozone nonattainment area consists of Delaware, Fairfield, Franklin, Knox, Licking, and Madison Counties. The Indiana portion of the Cincinnati ozone nonattainment area consists of Lawrenceburg Township (located within Dearborn County, Indiana). The Ohio portion of the Cincinnati area consists of Butler, Clermont, Clinton, Hamilton, and Warren Counties. For transportation conformity purposes, the MVEBs for the Indiana and Ohio portions of the Cincinnati area are combined. The 2020 and 2030 MVEBs, in tons per day (tpd), for VOCs and NO_X for the Indiana and Ohio portions of Cincinnati, and the Cleveland and Columbus, Ohio areas are as follows:

Area	2020 NO_X (tpd)	2020 VOCs (tpd)	2030 NO_X (tpd)	2030 VOCs (tpd)
Indiana and Ohio Portions of the Cincinnati—Indiana/Ohio/Kentucky Area	30.79	30.00	16.22	18.22
Cleveland-Akron-Lorain, Ohio	61.56	38.85	43.82	30.80
Columbus, Ohio	99.54	50.66	85.13	44.31

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they conform. Conformity to a State Implementation Plan (SIP) means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's MVEBs are adequate for transportation conformity purposes are outlined in the regulation at 40 CFR 93.118(e)(4). As set forth above, EPA determined that these MVEBs are adequate under the applicable standards set forth in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 19, 2016.

Robert Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–23295 Filed 9–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9953–22–OLEM]

Notice of New Streamlined Approval Process for Non-Regulatory Methods in SW–846

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is providing notice of a new streamlined approval process for non-regulatory methods in the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" manual, also known as SW–846. This new process will employ the use of Web site postings and an extensive email list to notify the SW–846 scientific community of methods being released for public comment, which differs from the traditional **Federal Register** publication. All methods beginning with Update VI to SW–846 will utilize the new process. This new process only applies to SW–846 methods published as guidance, where there are no changes to the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The process for updating or publishing SW–846 analytical methods that are required in the RCRA regulations (referred to as Method Defined Parameters or MDPs) will not change. EPA is not requesting public comment on this notice.

FOR FURTHER INFORMATION CONTACT: Christina Langlois-Miller, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002; telephone number: 703–308–0744; email address: *Langlois-Miller.Christina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This notice is directed to the public in general. It may, however, be of particular interest to those conducting waste sampling and analysis for RCRA-related activities. This universe might include any entity that generates, treats, stores, or disposes of hazardous or non-hazardous solid waste and might also include any laboratory that conducts waste sampling and analyses for such entities.

B. How can I get additional information about the new process?

You may access this **Federal Register** document electronically from the Government Printing Office under the "**Federal Register**" listings at FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*) or at the SW–846 Methods Web site (*https://www.epa.gov/hw-sw846/epas-streamlined-procedure-publishing-non-regulatory-sw-846-methods*).

II. What is the subject and purpose of this notice?

The Agency is announcing a new streamlined process for adding non-regulatory methods to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW–846. The SW–846 compendium consists of over 200 analytical methods for sampling and analyzing waste and other matrices. Most methods are intended as guidance (*i.e.,* non-regulatory methods) with the exception of what EPA refers to as "method defined parameters" or MDPs, that are required in the RCRA regulations for compliance purposes. In the interest of releasing new and updated SW–846 methods more quickly in order to respond to emergencies and issues such as emerging contaminants and keeping up with the speed of scientific advancements, EPA will be using a new process to release validated non-regulatory methods for public comment and to incorporate these methods into the official SW–846 compendium. This notice serves to notify the public of the new process, which EPA will begin using for its next set of updates to SW–846. Under the new process, EPA will no longer employ the **Federal Register** as a vehicle for adding non-regulatory methods and guidance to SW–846. However, the Agency will continue to use the regulatory development process for adding MDP methods to SW–846 (see *https://www.epa.gov/hw-sw846/final-rule-methods-innovation-rule-mir#mdp* for a list of MDPs). Non-regulatory methods and guidance will be released using EPA's SW–846 Web site, which can be found at *https://www.epa.gov/hw-sw846,* and a dedicated SW–846 electronic mailing list.

III. Background

Over the years, the regulated community has expressed concern that the Agency has not made available in a timely manner the use of analytical methods that take advantage of technological advancements. In an attempt to address the public's concern, the Agency published the Methods Innovation Rule (MIR), on June 14, 2005 (see 70 FR 34538–34592 or *https://www.gpo.gov/fdsys/pkg/FR-2005-06-14/pdf/05-10197.pdf*), which provided flexibility to laboratories regarding method selection for waste characterization in support of RCRA, as appropriate. In addition, the rule allowed modification to most SW–846 methods and substitution of non-SW–846 methods, provided the modified or substituted method meets the defined quality assurance/quality control (QA/QC) parameters established in the method or defined for the project and falls within EPA's mission to protect human health and the environment.

Since most SW–846 methods are guidance and not required by the RCRA regulations, EPA sought a more efficient approach to announce the availability of methods for public use and to solicit comment prior to incorporating new or revised methods in the SW–846 compendium.

IV. What is the new process?

EPA receives requests to add or update SW–846 methods from various sources (*e.g.,* EPA Regions, other federal and state government agencies, analytical method developers, commercial laboratories, and other scientific groups). These requests are considered if the new method or revision:

- Addresses a national emergency (*e.g.,* oil spill);
- Is essential for continuing the EPA mission (*e.g.,* regulatory change);
- Is needed by EPA Regions/program offices (*e.g.,* bioavailability of lead)
- Addresses an emerging environmental contaminant (*e.g.,* perfluorinated compounds)
- Makes available a new or updated technology (*e.g.,* collision cell mass spectrometry)
- Is a collaborative effort with other federal agencies (*e.g.,* DOD, USGS, FDA)
- Provides an opportunity for greener chemistry or increased safety (*e.g.,* decreased solvent use)

Once EPA selects a method for possible revision or inclusion in SW–846, the method will be sent to the SW–846 method workgroup, made up of chemists and technical experts with knowledge of and experience with the specific methodology and/or technology, for further evaluation.

Listed below are the new steps that EPA will follow for publication of non-regulatory SW–846 methods, beginning with final review from the SW–846 method workgroup. EPA will:

1. Obtain Agency organic and/or inorganic workgroup approval of new and/or revised methods.

a. Agency workgroups consist of EPA scientists from the Regions and program offices.

2. Post methods on the "Validated Methods" Web page at *https://www.epa.gov/hw-sw846/validated-test-methods-recommended-waste-testing* and link to the Hazardous Waste Test Methods landing page, at *https://www.epa.gov/hw-sw846.*

3. Notify the SW–846 analytical community via emails and web posting of the comment-period initiation date. The comment period will be set for a minimum of 30 days, depending on the number and complexity of methods.

a. The Web pages will also indicate that the methods are drafts and that comments are being accepted until the end date of the comment period.

4. Catalog and respond to public comments in a "Response to Comments" document.

5. Revise methods based on EPA's review of comments.

6. Post the new and/or revised methods, the "Response to Comments" background document(s), and other supporting documents permanently on the "SW–846 Compendium" Web page at *https://www.epa.gov/hw-sw846/sw-846-compendium.*

7. Email the SW–846 mailing list, notifying all entities of the incorporation of the new additions to the SW–846 compendium.

V. How can I sign up for the SW–846 mailing list?

If you would like to receive information regarding new policies, guidance related to SW–846 methods, announcements of open comment periods, and final changes or updates to methods in SW–846, it is important to sign up for the SW–846 mailing list. The form to sign up for the SW–846 mailing list is located at *https://www.epa.gov/hw-sw846/forms/contact-us-about-hazardous-waste-test-methods.* To sign up, fill out the form at the bottom of the page, including the "Name" and "Email Address" sections, and click the "Yes" button for Email List Sign-up before submitting.

The Agency also plans to find the email addresses of previous commenters on Updates to SW–846 to notify them of the new process and to see if they would like to be placed on the SW–846 mailing list.

VI. Summary

This new approach to announcing SW–846 methods for public comment will allow EPA to make available new advancements in technologies in a timely manner and provide increased accessibility to analytical procedures, guidance, and Updates to SW–846, while still employing a mechanism to request public comment and incorporate comments into the final methods. In addition, the new process will result in a cost savings for the Agency since it removes the burden of unnecessary steps in releasing guidance to the public while retaining the appropriate steps to ensure EPA's standard of quality and integrity.

Dated: September 20, 2016.

Barnes Johnson, Director,

Office of Resource Conservation and Recovery.

[FR Doc. 2016–23299 Filed 9–26–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–56–Region 6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Yuhuang Chemical Company, Inc. Methanol Plant in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: Pursuant to Clean Air Act (CAA) Section 505(b)(2) and 40 CFR 70.8(d), the Environmental Protection Agency (EPA) Administrator signed an Order, dated August 31, 2016, denying in part and granting in part a petition asking EPA to object to the operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) to Yuhuang Chemical Company, Inc. for its Methanol Plant (Title V operating permit 1560–00295–V0). The EPA's August 31, 2016 Order responds to a petition submitted by the Louisiana Environmental Action Network (LEAN) and Sierra Club (Collectively the Petitioners) on May 18, 2015. Sections 307(b) and 505(b)(2) of the Act provide that a petitioner may ask for judicial review of those portions of the Orders that deny objections raised in the petitions in the appropriate United States Court of Appeals. Any petition for review shall be filed by November 28, 2016, pursuant to section 307(b) of the Act.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, petition, and other supporting information. You may view the hard copies Monday through Friday, from 9:00 a.m. to 3:00 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order signed on August 31, 2016 is available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Brad Toups at (214) 665–7258, email address: *toups.brad@epa.gov* or the above EPA, Region 6 address.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review, and object, as appropriate, to a title V operating permit proposed by a state permitting authority. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

EPA received the petition from the Petitioners on May 18, 2015 for the operating permit issued on May 5, 2015 to Yuhuang Chemical Facility located in St. James Parish, Louisiana.

The Petitioner requested that the Administrator object to the proposed operating permit issued by the LDEQ to Yuhuang on several bases. In total, the Petitioner raised four primary claims in the Petition. The claims are described in detail in Section IV of the Order. In summary, the issues raised are that: (1, claim III) the permit fails to comply with the Act's requirements for public participation; (2, claim IV) the permit fails to meet PSD requirements; (3, claim V) a tank design is hazardous and there are additional unaccounted for emissions; and (4, claim VI) the LDEQ failed to adequately respond to EPA's comments. The Order issued on August 31, 2016 responds to claims III, IV, V, and VI (pp. 6–30).

Pursuant to sections 505(b) and 505(e) of the Clean Air Act (42 U.S.C. 7661d(b) and (e)) and 40 CFR 70.7(g) and 70.8(d), the Louisiana Department of Environmental Quality (LDEQ) has 90 days from the receipt of the Administrator's order to resolve the objections identified in Claim IV of the Order and submit a proposed determination or termination, modification, or revocation and reissuance of the Yuhuang Chemical Company, Inc. title V permit in accordance with the EPA's objection. The Order issued on August 31, 2016 responds to the Petition and explains the basis for EPA's decision.

Dated: September 21, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–23255 Filed 9–26–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

Correction

In notice document 2016–22522 beginning on page 64461 in the issue of Tuesday, September 20, 2016, make the following correction:

On page 63361, in the third column, under the **DATES** heading, in the second line "October 20, 2016" should read "November 21, 2016".

[FR Doc. C1–2016–22522 Filed 9–26–16; 8:45 am]

BILLING CODE 1505–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10009 First Heritage Bank, N.A., Newport Beach, California

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10009 First Heritage Bank, N.A., Newport Beach, California (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Heritage Bank, N.A. (Receivership Estate). The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary;

including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds.

Effective September 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: September 22, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–23282 Filed 9–26–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10261 Turnberry Bank, Aventura, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10261 Turnberry Bank, Aventura, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Turnberry Bank (Receivership Estate). The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds.

Effective September 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: September 22, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–23281 Filed 9–26–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Designated Reserve Ratio for 2017

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Designated Reserve Ratio for 2017.

Pursuant to the Federal Deposit Insurance Act, the Board of Directors of the Federal Deposit Insurance Corporation designates that the Designated Reserve Ratio (DRR) for the Deposit Insurance Fund shall remain at 2 percent for 2017.[1] The Board is publishing this notice as required by section 7(b)(3)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(A)(i)).

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; Robert Grohal, Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898–6939; or, Sheikha Kapoor, Senior Counsel, Legal Division, (202) 898–3960.

Dated at Washington, DC, this 20th day of September, 2016.

By order of the Board of Directors.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–23232 Filed 9–26–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, September 29, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2016–10: Caroline Goodson Parker
REG 2013–01: Draft Notice of Proposed Rulemaking on Technological Modernization
REG 2011–02: Internet Communication Disclaimers
Proposed Amendments to Directive 52
Promoting Voluntary Compliance
Presidential Public Financing Legislative Recommendations
Proposal to Attack Scam PACs
Second Proposal to Launch Rulemaking To Ensure that U.S. Political Spending is Free from Foreign Influence
Proposed Final Audit Report on Freedomworks for America (A13–18)
Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–23336 Filed 9–23–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and request for comment regarding the Federal Reserve proposal to extend with revision, the clearance under the Paperwork Reduction Act for the following information collection activity.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to extend, with revision, the Joint Standards for Assessing Diversity Policies and Practices (Policy Statement).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before November 28, 2016.

ADDRESSES: You may submit comments, identified by *OMWI Policy Statement,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

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[1] Section 327.4(g) of the FDIC's regulations sets forth the DRR, 12 CFR 327.4(g). There is no need to amend this provision because the DRR for 2017 is the same as the current DRR.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Joint Standards for Assessing Diversity Policies and Practices.

Agency form number: FR 2100.

OMB control number: 7100–0368.

Frequency: Annual.

Respondents: Financial institutions regulated by the Federal Reserve.

Estimated annual burden hours: 3,912 hours.

Estimated average hours per response: 8 hours.

Number of respondents: 488.

General description of report: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) requires the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Bureau of Consumer Financial Protection (CFPB), and Securities and Exchange Commission (SEC) (the Agencies) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. Section 342 requires each OMWI director to develop standards for "assessing the diversity policies and practices of entities regulated by the agency." The Policy Statement, published jointly by the Agencies in June 2015, contain those standards.

Legal authorization and confidentiality: The Board's Legal Division has determined that the information collections contained within the Policy Statement are authorized by section 342 of the Dodd-Frank Act, which requires the Board's OMWI director to develop standards for assessing regulated entities' diversity policies and practices and are voluntary.

The Standard regarding transparency, and a portion of the self-assessment Standard, call for regulated entities to provide information to the public, so confidentiality is not an issue with respect to those aspects of the Policy. A regulated entity may provide self-assessment material to the Board that contains confidential commercial information protectable under exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), and may request that the information be kept confidential on a case-by-case basis. The Federal Reserve will determine whether the information is entitled to confidential treatment on an ad hoc basis in connection with such a request. As noted in the Policy Statement, an entity's primary federal regulator may share information obtained from regulated entities with other Agencies, but will publish information disclosed to them only in a form that does not identify a particular entity or individual or disclose confidential business information.

Current Actions: The Federal Reserve previously received OMB approval for a voluntary information collection with respect to the Policy Statement, pursuant to which entities regulated by the Federal Reserve voluntarily self-assess their diversity policies and practices.[1] This proposed revision to that collection would add the Diversity Self-Assessment Template to assist with the self-assessment. The Template (1) asks for general information about a respondent; (2) includes a checklist of the standards set forth in the Policy Statement; (3) seeks additional diversity data; and (4) provides an opportunity for a respondent to provide other information regarding or comment on the self-assessment of its diversity policies and practices.

Board of Governors of the Federal Reserve System, September 22, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–23266 Filed 9–26–16; 8:45 am]

BILLING CODE 6210–01–P

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[1] 80 FR 33016 (June 10, 2015).

GOVERNMENT PUBLISHING OFFICE

Depository Library Council to the Director; Meeting

The Depository Library Council (DLC) to the Director, Government Publishing Office (GPO) will meet on Monday, October 17, 2016 through Wednesday, October 19, 2016 in Arlington, Virginia. The sessions will take place from 8 a.m. to 5:30 p.m., Monday and Tuesday and 8:00 a.m. to 12:30 p.m., on Wednesday. The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, Virginia. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The United States Government Publishing Office is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

Davita Vance-Cooks,
Director, Government Publishing Office.

[FR Doc. 2016–23186 Filed 9–26–16; 8:45 am]

BILLING CODE 1520–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 81 FR 54091–54094, dated August 15, 2016) is amended to reflect the reorganization of the Office of Safety, Security and Asset Management, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete and replace the title and the mission and function statements for the *Office of Safety, Security and Asset Management (CAJS)* and insert the following:

Office of Safety, Security and Asset Management (CAJS). The Office of Safety, Security and Asset Management (OSSAM) serves as the lead organizational entity for providing a safe, secure, functional, and healthy workplace environment for the Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR) staff while ensuring environmental stewardship and appropriate management of CDC assets.

Office of the Director (CAJS1). (1) Directs, manages, coordinates and evaluates the programs and activities of OSSAM service offices; (2) develops goals and objectives, and provides leadership, policy formulation, and guidance in program planning and development; and (3) provides advice and counsel to the CDC Director, the Chief Operating Officer, and other senior Office of the Director (OD) and Centers/Institute/Offices (CIO) officials on all OSSAM programs and activities.

Office of Operations (CAJS13). (1) Oversees technical programs to ensure a safe, secure, and healthy workplace while ensuring all worksite issues are properly addressed and brought to closure; (2) provides oversight and guidance to CIOs through OSSAM liaison officers who support programs as the key contact for matters related to safety, security, facilities, logistics, and sustainability, and (3) manages space requests and provides recommendations to the Chief Operating Officer for approval for all CDC CIOs.

Office of Financial, Administrative, and Information Services (CAJS13B). (1) Provides administrative guidance, advice, and support to OSSAM employees; (2) manages OSSAM information technology support, including system development, maintenance, design, and implementation; (3) provides direction, strategy, analysis, and operational support in all aspects of OSSAM's human capital management and administrative operations; (4) develops and implements internal policies and procedures, including developing related communications; (5) provides employee and labor relations support; (6) serves as the point of contact between OSSAM OD and each of the CDC Business Service Offices; (7) provides overall budgetary support and oversight for OSSAM, including budget planning, execution, monitoring, and reporting; (8) provides oversight, guidance and approval for the procurement process OSSAM-wide; (9) provides oversight of property accountability, including appointing an OSSAM property accountability officer; (10) provides guidance and oversight related to the records management requirements and process; and (11) establishes and enforces OSSAM-related travel policies.

Office of Policy, Performance, and Communications (CAJS13C). (1) Provides technical and managerial direction for the development of organizational and CDC-wide policies as it relates to safety, security, and asset management to support CDC's public health science and programs; (2) participates with senior management in program planning, policy determinations, evaluations, and decisions concerning escalation points for safety, security, and asset management; (3) provides leadership, coordination, and collaboration on issues management and triaging, and ensures the process of ongoing issues identification, management, and resolution; (4) conducts policy analysis, tracking, review, and clearance as it relates to safety, security, and asset management to support CDC's public health science and programs; (5) coordinates with CDC-Washington on authorizations; (6) coordinates with the CDC Office of Financial Resources regarding budget justifications and appropriation matters; (7) manages and responds to Congressional inquiries and media requests as it relates to safety, security, and asset management to support CDC's public health science and programs; (8) serves as the point of contact for the policy analysis, technical review, and final clearance of executive correspondence and policy documents that require approval from the CDC Director, CDC Leadership Team, or officials; (9) leads OSSAM performance management, including the development of strategic plans, performance metrics, dashboards, Quarterly Program Review materials, and Office of the Chief Operating Officer performance management initiatives; (10) provides OSSAM-wide communications support which includes presentations, messages, clearances, emergency notifications, and meetings; (11) ensures accurate and consistent information dissemination, including Freedom Of Information Act requests and CDC's Division of Issues Management, Analysis, and Coordination controlled correspondence; (12) ensures consistent application of CDC correspondence standards and styles; and (13) provides leadership, technical assistance, and consultation in establishing best practices in internal and external business communication and implements external communication strategies to promote and protect CDC's brand (*e.g.,* employee communications, intranet, internet and other communication platforms).

Public Health Intelligence Office (CAJS14). (1) Provides leadership and operational and technical support for development, and implementation of intelligence activities; (2) analyzes and disseminates intelligence related to public health, medical and scientific intelligence, counterintelligence, insider threat, and global security; (3) researches, compiles, produces, and provides classified and unclassified briefings; (4) performs prepublication review of classified and sensitive information; (5) serves as the CDC liaison with U.S. intelligence community agencies; (6) provides global security oversight in coordination with U.S. government agencies, international organizations, and non-governmental organizations; (7) identifies training needs and recommends specific training objectives to be met and the methods to achieve them (*i.e.* Security Awareness, Counterintelligence Awareness, Foreign Travel Safety Brief); (8) develops, implements, and presents sound and well-grounded training programs to prepare CDC staff members pending deployments or travel abroad; (9) performs security assessments of and technical assistance to CDC international facilities; (10) supports CDC international operational goals through membership on the Department of State Overseas Security Policy Board; (11) provides oversight of the Defensive Counterintelligence and Insider Threat program; (12) processes non-United States citizen requests for physical or logical access; (13) provides guidance over all security issues related to foreign travel matters; (14) provides policy and implementation guidance on all standards and requirements related to the processing and storing of controlled unclassified information; (15) manages and operates CDC's Sensitive Compartmented Information Facility (SCIF) and its secure communications systems; (16) maintains accreditation of CDC's SCIF; (17) manages and operates collateral-level secure facilities nationally; (18) provides policy and implementation guidance on the standards for using classified document control for CDC; (19) provides policy and implementation guidance on all standards and requirements related to the processing and storing of classified information by CDC; (20) develops and administers a physical protection plan for all national security information and material held or processed by CDC in accordance with established laws, mandates, and government-wide policies; (21) acts as Communications Security Custodian for all classified matters involving the National Security Agency; (22) maintains CDC's emergency destruction plan for classified material and equipment; (23) conducts preliminary investigations of security violations relative to the loss or compromise/suspected compromise of sensitive, classified, or crypto-logic materials or devices throughout CDC; (24) ensures proper destruction of classified documents that are no longer required; (25) conducts security inspections and audits of all national security information storage and processing areas; (26) responsible for implementing, maintaining, and updating of CDC's Continuity Of Operations (COOP) communication vehicles; and (27) provides deployable unclassified and classified communication platforms to support high-level deploying staff to natural or manmade disaster areas in support of COOP plans.

Quality and Sustainability Office (CAJS15). (1) Provides quality assurance and continuous improvement by establishing a framework for process improvement associated with all OSSAM functions; (2) ensures accountability and environmental stewardship of CDC assets in order to protect CDC's ability to carry out its health mission today and in the future; (3) conducts quality improvement audits on all OSSAM program areas of responsibility; (4) assembles technical advisory teams, as needed, to conduct audits/reviews of OSSAM program areas; and (5) provides oversight of CDC's sustainability programs.

Asset Management Services Office (CAJSB). The Asset Management Services Office (AMSO) provides a safe, secure, healthy, and functional workplace environment for CDC staff by ensuring that assets are managed effectively while maintaining efficient operations and logistical support, customer satisfaction, and environmental stewardship.

Office of the Director (CAJSB1). (1) Plans, directs, and coordinates the functions and activities of AMSO; (2) provides management and administrative direction for budget planning and execution, property management, and personnel management within AMSO; (3) provides leadership and strategic support to senior managers in the determination of CDC's long-term facility needs; (4) coordinates the operations of AMSO staff involved in the planning, evaluation, design, construction, and management of facilities and acquisition of property; (5) provides centralized value engineering services, policy development and coordination, and global acquisition planning for AMSO; (6) assists and advises senior CDC officials in the development, coordination, direction, and assessment of facilities and real property activities throughout CDC's facilities and operations, and assures consideration of facilities management implications in program decisions; (7) provides collaboration and centralized consolidation of division reporting requirements and other deliverables to the Department of Health and Human Services (HHS), the Office of Financial Resources (OFR), and other internal and external entities; and (8) oversees functions of the campus portfolio managers who prepare the capital and repair and improvements (R&I), CDC and HHS-level Facility Project Approval Agreements, asset business plans, campus master plans, and special studies, monitors performance indicators to identify/address portfolio deficiencies, serves on project core teams including, Historic Preservation, Green Building, International Facilities, Real Property Acquisition, Asset Management Team and Security Liaison Activities, and administers the National Environmental Policy Act,.

Leased Property Management Services (CAJSB12). (1) Conducts real estate activities throughout CDC, including the acquisition of leased space, and the purchase and disposal of real property for CDC nationwide, with emphasis on current and long- range planning for the utilization of existing and future real property resources; (2) performs space management (assignment and utilization) of all CDC space, both owned and leased, nationwide; (3) provides technical assistance in space planning to meet programmatic needs; (4) executes all easements for owned property, in coordination with campus liaison officers; (5) administers day-to-day management of leased facilities and ensures contract compliance by lessors; (6) provides technical assistance and prepares contract specifications for all repair and improvement projects in leased space; (7) maintains liaison with the General Services Administration regional offices; (8) performs all functions relating to leasing and/or acquisition of real property under CDC's delegation of authority for leasing, including direct lease actions; and (9) coordinates the relocation of CDC personnel within owned and leased space.

Engineering, Maintenance, and Operations Services Office (CAJSBB). The Engineering, Maintenance, and Operations Services Office (EMOSO) manages facilities engineering, engineering controls, security systems engineering, fire alarm and life safety, and monitors, operates, and maintains owned buildings, central utility plants, systems, equipment, and performs systems/building commissioning. Specifically, EMOSO: (1) Operates, maintains, repairs, and modifies CDC's Atlanta-area office buildings, laboratories, and plant facilities, and other designated CDC facilities throughout the U.S. and other geographic areas, and conducts a maintenance and repair program for CDC's program support equipment; (2) develops services for new, improved, and modified equipment to meet program needs; (3) provides technical assistance, reviews maintenance and operation programs, and recommends appropriate action for all Atlanta-area facilities and other designated CDC facilities throughout the U.S. and other geographic areas; (4) provides recommendations, priorities, and services for new, improved, or modified equipment to meet program needs; (5) provides maintenance and operation of the central energy plant including structures, utilities production and distribution systems, and equipment; (6) conducts a program of custodial services, waste disposal, incinerations, disposal of biological waste and chemical hazardous waste, and other building services at all CDC Atlanta-area facilities and other designated CDC facilities throughout the U.S. and other geographic areas; (7) provides landscape development, repair, and maintenance at all Atlanta-area facilities and other designated CDC facilities throughout the U.S. and other geographic areas; (8) provides hauling and moving services for CDC in the Atlanta-area; (9) provides an Integrated Pest Management Program to control insect and rodents for CDC in Atlanta-area facilities; (10) develops required contractual services and provides supervision for work performed; (11) establishes and maintains a computerized system for maintenance services, for stocking and ordering supplies, and replacement parts; (12) provides for pick-up and delivery of supplies and replacement parts to work sites; (13) maintains adequate stock levels of supplies and replacement parts; (14) prepares design and contract specifications, and coordinates completion of contract maintenance projects; (15) manages CDC's Energy Conservation Program for all CDC facilities; (16) reviews all construction documents for energy conservation goals and compliance with applicable CDC construction standards; (17) participates on all core teams and value engineering teams; (18) provides maintenance and inspection for fire extinguishers and fire sprinkler systems; (19) provides services for the procurement of natural gas; (20) develops and maintains a standard equipment list for all CDC facilities; (21) assists the other AMSO offices with facility-related issues, as needed; (22) provides building coordinators to interface with program personnel to keep the building and equipment functioning; (23) functions as the CDC waste and recycling services manager and (24) coordinates the commissioning of new buildings, structures, systems and components, as necessary.

Projects and Construction Management Services Office (CAJSBC). The Projects and Construction Management Services Office (PCMSO) manages capital improvement projects, repair and improvement projects, and construction services. Specifically, PCMSO: (1) Provides professional architectural/engineering capabilities, and technical and administrative project support to CDC and CIOs for renovations and improvements to CDC-owned facilities and construction of new facilities; (2) develops project management requirements, including determination of methods, means of project completion, and selection of resources; (3) provides critical path method scheduling support for all large capital construction projects and all R&I projects; and (4) provides central cost estimating support for all large capital construction projects, all R&I projects, special projects, feasibility studies, as requested, and certain work orders, as requested.

Logistics Management Services Office (CAJSBD). (1) Develops and implements CDC-wide policies, procedures, and criteria necessary to comply with Federal and departmental regulations governing inventory management, property administration, property reutilization and disposal, supply management, and receiving and distribution; (2) determines, recommends, and implements procedural changes needed to maintain effective management of CDC property, including but not limited to inventory control, property records, and property reutilization and disposal; (3) provides audits, training and technical assistance to CDC CIOs on inventory management, property administration, property reutilization and disposal, supply management, and property receiving; (4) determines the requirement for and serves as the functional proponent for the design, test, and implementation of logistics management systems; (5) represents CDC on inter- and intra-departmental committees relevant to logistical functions; (6) serves as the CDC liaison to HHS and other Federal agencies on logistical matters such as inventory management, property administration, property reutilization and disposal including chemical hazardous waste, supply management, and receiving and distribution; (8) provides medical maintenance management support for CDC's personal property; (9) provides logistics and movement planning support for CDC CIOs; and (10) establishes branch goals, objectives, priorities, and assures consistency and coordination with overall OSSAM logistical goals and objectives.

Design, Engineering and Management Services Office (CAJSBE). The Design, Engineering and Management Services Office (DEMSO) provides architectural, engineering design, project management services, and interior design services, and manages facility plans, drawings and technical documents, and ensures proper configuration control. Specifically, DEMSO: (1) Prepares architectural and engineering designs, and specifications for construction of modifications and renovations to CDC-owned facilities; (2) provides architectural and engineering technical expertise and is the technical authority on new facilities, and modifications and renovations on facility project designs; (3) provides furniture, fixture, and equipment designs, and project management services for all CDC facilities; (4) provides record and guideline document support services to all AMSO offices; and (5) maintains CDC Design Standards and Guidelines for use as basis of design for construction of new facilities, and modifications and renovations in CDC-owned facilities.

Occupational Health and Safety Office (CAJSC). The Occupational Health and Safety Office (OHSO) creates and maintains a safe environment for all CDC staff, contractors, and visitors; prepares CDC staff for working in hazardous conditions domestically and abroad; and maintains compliance with relevant health, safety and environmental laws and regulations.

Office of the Director (CAJSC1). (1) Provides leadership and direction for OHSO to proactively ensure safe and healthy workplaces at CDC worksites for CDC employees, contractors, and visitors, including deployed personnel; (2) serves as the principal advisor to the Director, OSSAM, with responsibility for the CDC health and safety program; (3) plans, identifies and requests required resources for OHSO; (4) directs, manages and evaluates the operations and programs of OHSO; (5) assures compliance with applicable Federal, state, and local health, safety, and environmental laws and regulations; (6) provides the tools, knowledge, and resources needed for workers to be safe and healthy and to protect the communities adjacent to CDC-owned and leased facilities; (7) promotes healthy and safe work practices to help prevent and mitigate the cause of injuries and illnesses within CDC workplaces; (8) provides advice and counsel to the CDC Director and CIO Leadership, CDC Safety Officers, and nationally and internationally assigned CDC staff on health, safety, and environment-related matters; (9) collaborates with domestic and global partners on CDC staff health and safety issues; (10) plans, organizes and directs OHSO health communication strategies and activities; (11) collaborates with CIOs to provide safety training; (12) provides leadership and oversight to the Quality and Compliance Branch; the Industrial Hygiene and Safety Branch, and the Clinic Branch; (13) supports management and operations by providing administrative and financial services; and (14) provides leadership and direction to ensure medical surveillance and response for CDC staff, contractor and visitor injury, illness, occupational exposure and for the preparation for temporary duty and deployment to hazardous locations.

Quality and Compliance Branch (CAJSCB). (1) Provides coordination and expertise in program planning, policy development, quality assurance, evaluation, data management, information technology, and risk management to assure compliance; (2) ensures accurate record keeping, reporting, data analysis, and trend identification to improve safety at CDC; (3) provides leadership to ensure completion, updates, and continuous improvement of all required manuals and standard operating procedures; (4) develops and maintains annual quality and safety improvement plans and assessments; (5) conducts continuous quality improvement of data collection through a data management plan which includes comprehensive systems review and improvement to support service enhancements; (6) identifies CDC and/or government policy priorities for implementation; (7) serves as a primary source of information and expertise regarding policies, activities, and issues related to safety and health; (8) develops quality improvement strategies for customer service and service enhancements that will be incorporated in OHSO program, strategic, and performance plans; and (9) provides ongoing assessments and analysis to identify continuous quality improvement to ensure all OHSO staff provide consistent and accurate information to stakeholders and CDC.

Industrial Hygiene and Safety Branch (CAJSCC). (1) Identifies, assesses, mitigates, and monitors hazards in the workplace; (2) provides leadership, expertise, and training on safety/occupational health and industrial hygiene; (3) provides occupational health and safety technical and consultative services to all (owned and leased) CDC campuses to assure compliance with Federal Occupational Health and Safety Standards, and to provide a workplace free of recognized hazards; (4) supports safety activities of domestic and global staff through the establishment of a safety and occupational health plan, the development and implementation of the risk management policy, and coordination of standard operating procedures with the CIOs; (5) conducts comprehensive safety reviews through safety surveys and audits to ensure that CDC workplaces are free from potential and identified hazards; (6) provides coordinated responses to requests that reflect OHSO policy and compliance standards; and (7) conducts health and safety surveys, accident/illness investigations, safety help desk response/investigations, ergonomic evaluations and follow-ups, employee and workplace monitoring for chemical exposures, noise, indoor air quality and other chemical and physical hazards, job hazard/job safety assessments and use of personal protective equipment, lock-out tag-out procedures, environmental audits and compliance, contractor health and safety plan review, and requested safety support services.

Occupational Health Clinic (CAJSCD). (1) Provides occupational health services to maintain a healthy domestic and global CDC workforce through occupational health clinics and contracted health services; (2) manages CDC occupational health services to ensure CDC compliance with Occupational Health and Safety Standards and to support the occupational requirements of CDC; (3) serves as the CDC resource for routine and emergency response occupational health services; (4) prepares CDC staff to work in hazardous conditions in response to domestic and international public health threats or concerns; (5) provides medical evaluations and consultation for personal protective equipment; (6) assures the safety and health of the CDC workforce for during deployments; (7) supports deployment processes through health screenings and physical examinations, administration of vaccinations and medications, and respiratory clearance; (8) conducts and documents ongoing medical surveillance, as needed, for post-exposures or deployed staff; (9) ensures a prepared and resilient workforce; and (10) develops and maintains procedures that support the occupational health of the CDC workforce.

Worklife Wellness Office (CAJSD). The Worklife Wellness Office (WWO) provides an environment that promotes a culture that improves the health and well-being of workers by integrating effective policies, programs, and processes accessible to all staff to sustain and improve performance, increase readiness, and support healthy choices and behaviors. Specifically, WWO: (1) Provides a core set of services and resources related to health and wellness including preventive screenings, health education and campaigns, health consults, personalized evaluation, counseling, and follow-up care/referrals; (2) engages in holistic organizational wellness efforts such as benchmarking best practices, implementing or maintaining proper policy, systems, linkages, physical environment, social environment, and external partners/coalitions outreach; (3) oversees the lifestyle fitness centers; (4) directs the employee assistance program; and (5) manages the vending and food services for Atlanta campuses.

Security Services Office (CAJSE). The Security Services Office (SSO) serves as the lead organizational entity for providing the overall framework, direction, coordination, implementation, oversight and accountability for CDC's infrastructure protection, and personnel security program. Specifically, SSO: (1) Serves as the primary liaison for homeland security activities; (2) provides a secure work environment for CDC/ATSDR personnel, visitors and contractors; and (3) plans and implements CDC's crisis management activities which ensure a continued public health response to the nation.

Office of the Director (CAJSE1). (1) Directs, manages, coordinates and evaluates the programs and activities of SSO; (2) develops goals and objectives, and provides leadership, policy formulation and guidance in program planning and development; (3) prepares, reviews, and coordinates budgetary, informational, and programmatic documents; (4) provides oversight and comprehensive security services to CDC's Strategic National Stockpile program; and (5) serves as a liaison to local, state, and Federal law enforcement entities and security personnel within other HHS Operating Divisions.

Physical Security Laboratory and Technical Branch (CAJSEB). (1) Provides coordination, guidance, and security operations to all facilities CDC, including all owned and leased sites; (2) provides campus-wide access control for all the Atlanta leased sites, the Chamblee and Lawrenceville campuses, Anchorage, Alaska, and Fort Collins, Colorado, and all other CDC laboratories; (3) provides management and oversight of contract guard force and local police; (4) responsible for physical security during emergency operations; (5) promotes theft prevention, provides training and conducts investigations; (6) conducts site surveys to assess all physical security activities and correct deficiencies and implement improvement as necessary; (7) manages and maintains the emergency alert system; (8) maintains 24-hour emergency notification procedures for Fort Collins, Colorado, San Juan, Puerto Rico, and Anchorage, Alaska; (9) manages and operates CDC's Security Operations Centers (SOC) 24 hours a day, seven days a week at Roybal, Ft. Collins, and other sites as constructed; (10) manages the Locksmith Office; (11) maintains inventory controls and measures, and implements, installs, repairs, and re-keys all locks with emphasis on the overall physical security of CDC and its owned and leased facilities; (12) provides security recommendations to CDC programs regarding capabilities and limitations of locking devices; (13) provides combination change services to organizations equipped with cipher locking devices; (14) coordinates with engineers and architects on CDC lock and keying requirements for new construction; (15) improves and expands video monitoring to ensure the security of all employees, visitors, contractors and the general public while at the CDC; (16) manages and coordinates Select Agent security and the CDC Safety and Security Plan; (17) manages and maintains the Intrusion Detection Automated system, including P2000; and (18) provides coordination, guidance, and security operations for all CDC laboratories nationwide.

Physical Security Operations Branch (CAJSEC). The Physical Security Operations Branch (PSOB) coordinates and implements security operations, including access control and crisis management, for the CDC Headquarters campus and directs and oversees the security guard contract for Atlanta facilities. Specifically, PSOB: (1) Provides coordination, guidance, and security operations; (2) provides campus-wide access control; (3) provides management and oversight of contract guard force and local police; (4) conducts physical security during emergency operations; (5) promotes theft prevention, provides training and conducts investigations; (6) conducts site surveys to assess all physical security activities and correct deficiencies, and implement improvements as necessary; (7) manages and operates CDC's SOC 24 hours a day, seven days a week at the Roybal campus, and other sites as constructed; (8) coordinates nationwide security operations through the Roybal campus SOC; (9) maintains 24-hour emergency notification procedures; (10) manages and maintains the emergency alert system; (11) improves and expands video monitoring to ensure the security of all employees, visitors, contractors and the general public while at the CDC; (12) provides coordination, guidance, and security operations for all Global Communication Center events and visits; and (13) manages and coordinates the security of all visitors and guests to all Atlanta-area CDC campuses.

Personnel Security Branch (CAJSED). (1) Conducts background investigations and personnel suitability adjudications for employment with CDC in accordance with 5 CFR 731, Executive Order 12968 and Executive Order 10450; (2) submits documentation for security clearances, and maintains an access roster in a security clearance database; (3) implements high risk investigations such as Public Trust Investigations for employees GS–13s and above who meet HHS criteria standards for employees working in Public Trust positions; (4) conducts adjudications for National Agency Check with Inquiries cases and assists HHS in adjudicating security clearance cases; (5) provides personnel security services for full time employees, guest researchers, visiting scientists, students, contract employees, fellows, and the commissioned corps; (6) conducts initial "Security Education Briefing" and annual Operational Security Training; (7) coordinates employee drug testing; (8) provides identification badges and cardkey access for personnel within all CDC metro Atlanta area facilities as well as some out-of-state CDC campuses; (9) enrolls individuals with a security clearance or approval in the biometric encoding system; (10) maintains hard copy records of all individuals' requests and authorizations for access control readers; and (11) manages and operates cardkey systems.

Internal Emergency Management Branch (CAJSEE). (1) Leads a comprehensive internal emergency management program that efficiently coordinates CDC resources to, first and foremost, protect lives, then to safeguard the environment and property through mitigation, preparedness training, response, continuity and recovery from all natural, man-made and technological hazards that may impact CDC facilities; (2) Implements, maintains, and updates CDC's Occupant Emergency Plan/Program; (3) conducts and evaluates annual tabletop, functional, and full-scale exercises for all CDC facilities with Designated Officials and Occupant Emergency Organizations; (4) recommends future emergency management and emergency response-related programs, policies, and/or procedures; (5) provides leadership and coordination in planning and implementation for internal emergencies; and (6) provides leadership and coordination in planning and implementation for internal emergency incidents affecting the CDC facilities, including incident response and support.

Transportation Services Office (CAJSG). The Transportation Services Office (TSO) develops and provides CDC-wide transportation policies, procedures and services ensuring a safe, secure and healthy workplace is established and maintained in accordance with federal and departmental regulations. Specifically, TSO: (1) Provides oversight, expertise, guidance, and program support for transportation related activities; (2) provides subject matter expertise on transit initiatives, facility master planning, and liaise with the community regarding transportation planning; (3) provides fleet management and shipping operations; (4) performs parking administration, commuter assistance, manages the Transportation Choices Program, employee housing and relocation services, and coordinates transportation services; (5) develops and implements CDC-wide policies, procedures, and criteria necessary to comply with Federal and departmental regulations governing transportation and fleet management; (6) determines, recommends, and implements procedural changes needed to maintain effective management of CDC transportation services, including but not limited to, shipping and return of CDC materiel, transportation of freight, and CDC's vehicle fleet; (7) represents CDC on inter- and intra-departmental committees relevant to transportation and traffic management; and (8) establishes branch goals, objectives, and priorities, and assures consistency and coordination with overall OSSAM goals and objectives.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 81 FR 54091–54094, dated August 15, 2016) is amended to reflect the reorganization of the Division of Healthcare Quality and Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Office of Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete and replace the title and the mission and function statements for the *Division of Healthcare Quality and Promotion (CVLD)* and insert the following:

Division of Healthcare Quality Promotion (CVLD). Protects patients and healthcare personnel, and promotes safety, quality, and value in both national and international healthcare delivery systems. In carrying out its mission, Division of Healthcare Quality Promotion (DHQP): (1) Measures, validates, interprets, and responds to data relevant to healthcare-associated infections (HAI); antimicrobial use and resistant infections, sepsis, adverse drug events, blood, organ and tissue safety, immunization safety, and other related adverse events or medical errors in healthcare affecting patients and healthcare personnel; (2) investigates and responds to emerging infections, antimicrobial resistance, and related adverse events among patients and healthcare personnel; (3) develops and maintains the National Healthcare Safety Network (NHSN), a tool for monitoring healthcare-associated infections, antimicrobial use and resistance, measuring healthcare outcomes and processes, and monitoring healthcare worker vaccination and selected health measures in healthcare facilities; (4) assesses local, regional, national scope and burden of infections caused by resistant-bacteria in the U.S. through surveillance and special studies, review of national healthcare data sets, and laboratory surveillance programs; (5) conducts epidemiologic, and basic and applied laboratory research to identify new strategies to monitor and prevent infections/antimicrobial resistance, and related adverse events or medical errors, especially those associated with medical or surgical procedures, indwelling medical devices, contaminated products, dialysis, healthcare environment, and water; (6) collaborates with academic and public health partners to design, develop, and evaluate new approaches to monitoring infections and the efficacy of interventions for preventing infections, improving antibiotic use, and reducing antimicrobial resistance, and related adverse events or medical errors; (7) develops and disseminates evidence-based guidelines and recommendations to prevent and control HAI, antimicrobial resistance (AR), and related adverse events or medical errors; (8) collaborates with Federal, state, and local public health and private partners to promote nationwide implementation of CDC guidelines and other evidence-based interventions to prevent HAI, antimicrobial resistance, and related adverse events or medical errors among patients and healthcare personnel; (9) evaluates the impact of evidence-based recommendations and interventions across the spectrum of healthcare delivery sites; (10) serves as the Designated Federal Official for the Healthcare Infection Control Practices Advisory Committee (HICPAC); (11) serves as the National Reference Laboratory for the identification and antimicrobial susceptibility testing of staphylococci, anaerobic bacteria, non-tuberculous mycobacterial, and those gram-negative bacilli causing healthcare-associated infections; (12) serves as the technical reference laboratory for detection and characterization of other pathogens related to healthcare, and for characterizing the contribution of the healthcare environment to HAI and antimicrobial resistant infections; (13) serves as a global resource for HAI, antimicrobial resistance, and device-associated HAI; (14) coordinates guidance and research related to infection control across CDC and with national and international partners; (15) monitors vaccine safety and conducts research to evaluate the safety of available and new vaccines; (16) trains EIS Officers and other trainees; (17) coordinates antimicrobial resistance activities at CDC; (18) works in a national leadership capacity with public and private organizations to enhance antimicrobial resistance prevention and control, surveillance and response, and applied research; (19) coordinates blood, organ, and other tissue safety at CDC; and (20) provides expertise and assistance to HHS, other Federal agencies, and global partners on efforts and activities related to safe healthcare.

Office of the Director (CVLD1). (1) Manages, directs, and coordinates the activities of DHQP; (2) provides leadership and guidance on policy impacting patient and healthcare safety; (3) leads targeted patient safety communication campaigns coordinated with release of CDC surveillance data, infection control guidelines, research publications, and prevention tools; (4) fosters strategic partnerships with clinical professional organizations to advance implementation of CDC's recommendations and best clinical practices; (5) leads communication/media outreach to include social media platforms and CDC's patient and healthcare safety Web sites; (6) works with Federal agencies, international organizations, and other partners on activities related to safe healthcare; (7) coordinates state and local activities to monitor and prevent HAI and antimicrobial resistance; (8) coordinates activities related to infection control in healthcare and related settings including, guideline development and maintenance, interim guidance development, training, consultation, and international activities across DHQP, CDC, and with national and international partners; (9) coordinates DHQP activities and collaborates with the CDC EOC for emergency response to emerging infections in healthcare; (10) coordinates DHQP activities and collaborates with other CIOs and Federal agencies to prepare healthcare to respond to emerging threats; (11) oversees the quality of DHQP research activities and identifies research gaps; (12) leads CDC's activities on blood, organ, and other tissue safety; (13) represents CDC on the Advisory Committee on Blood Safety and Availability, and the Advisory Committee on Organ Transplantation; (14) works with other Federal agencies, state governments, and other public and private organizations to enhance blood, organ, and other tissue safety through coordination of investigation, prevention, response, surveillance, applied research, health communication, and public policy; (15) provides leadership and guidance for program planning and development, program management, and operations; (16) provides DHQP-wide administrative and program services, and coordinates or ensures coordination with the appropriate CIOs and CDC staff offices on administrative and program matters including, budget formulation and execution, and human resource management; (17) oversees the coordination of Federal and state programs and new initiatives to prevent HAI and antimicrobial resistance; (18) interprets general program and administrative policy directives for implications on management and execution of DHQP's programs; (19) serves as lead, primary contact, and liaison with relevant CDC Staff Offices on all matters pertaining to DHQP's procurement needs and activities; (20) provides management and coordination for DHQP-occupied space and facilities including laboratory space and facilities; (21) provides oversight and management of the distribution, accountability, and maintenance of CDC property and equipment including laboratory property and equipment; (22) provides program and administrative support for HICPAC; and (23) advises the Director, NCEZID, on science, policy and communication matters concerning DHQP activities.

Antimicrobial Resistance Coordination and Strategy Unit (CVLD13). (1) Oversees the coordination of AR activities at CDC to meet national goals; (2) represents CDC in interagency activities on AR including the President's Advisory Committee for Combatting Antibiotic Resistant Bacteria (PAC–CARB); (3) coordinates with other agencies, state governments, medical societies, and other public and private organizations to enhance AR prevention and control, surveillance and response, and applied research; (4) represents CDC at the Transatlantic Task Force on Antimicrobial Resistance; (5) oversees CDC AR budget to implement AR activities as part of the Federal Action Plan to Combat Antibiotic Resistant Bacteria; (6) coordinates policies and communications associated to CDC-wide programs related to AR; (7) ensures coordination with appropriate CIOs and CDC staff offices on AR program matters, including budget formulation and execution; (8) provides updates and reports about CDC AR activities and progress to the CDC Director, HHS, and the White House; and (9) oversees coordination of CDC collaborations and new Federal initiatives to detect, respond and prevent antimicrobial resistance.

International Infection Control Activity (CVLD14). (1) Leads, in collaboration with the appropriate CIO and CDC components, global health activities related to the prevention of HAI, antimicrobial resistance, and related adverse events or medical errors; (2) coordinates international efforts to establish and improve infection prevention and control policies, programs, and coordination; (3) assists countries to improve infection prevention and control capacity toward prevention and control of HAI disease outbreaks and device-associated HAIs; (4) collaborates with ministries of health, CDC country offices, and implementing partners, to develop country-specific national policies and action plans to reduce the global burden of antimicrobial resistance associated with healthcare delivery; and (5) provides technical assistance to partners in building antimicrobial resistance laboratory capacity and surveillance systems.

Clinical and Environmental Microbiology Branch (CVLDB). (1) Leads national laboratory characterization of HAI-related threats in partnership with state and regional laboratories; (2) provides comprehensive laboratory support and expertise for investigations of recognized and emerging pathogens in healthcare settings, such as methicillin-resistant S. aureus, carbapenem-resistant Enterobacteriaceae (CRE), and Clostridium difficile; (3) provides laboratory response to outbreaks and emerging threats associated with infections/antimicrobial resistance and related adverse events throughout the healthcare delivery system; (4) develops methods to assess contamination of environmental surfaces; (5) investigates novel and emerging mechanisms of antimicrobial resistance among targeted pathogens found in healthcare settings; (6) conducts research in collaboration with partners to develop new, accurate methods of detecting antimicrobial resistance in bacteria and to improve reporting of antimicrobial susceptibility test results to physicians to improve antimicrobial use; (7) conducts laboratory research to identify new strategies to prevent infections/antimicrobial resistance, related adverse events, and medical errors, especially those associated with invasive medical devices, contaminated products, dialysis, and water; (8) maintains capacity to evaluate commercial microbial identification, antimicrobial susceptibility testing systems and products, and facilitates their improvement to provide accurate patient test results; (9) investigates the role of biofilms, particularly those detected in indwelling medical devices and medical water systems, in medicine and public health, and identifies novel methods to eliminate colonization and biofilm formation on foreign bodies; (10) investigates the role of microbiome in the prevention of infections and antimicrobial resistance; (11) investigates the role of the water distribution systems in healthcare facilities in order to understand and prevent transmission of healthcare-associated infections due to water; and (12) provides expertise, research opportunities, training, and laboratory support for investigations of infections and related adverse events to other CDC CIOs and to our partners in areas related to quality clinical microbiology laboratory practices, investigation of emerging pathogens, and environmental microbiology.

Prevention and Response Branch (CVLDC). Across the healthcare continuum, including acute, long-term, ambulatory, and chronic care settings: (1) Develops, promotes, and monitors implementation of evidence-based recommendations, standards, policies, strategies and related educational materials to prevent and control HAI, and related adverse events, and healthcare personnel safety events associated with antibiotic resistance, device, and procedure associated infections, poor adherence to quality standards and safety, and emerging infectious diseases; (2) develops, promotes, and monitors implementation of and adherence to evidence-based recommendations, standards and related educational materials, policies and strategies to increase adherence to appropriate antimicrobial use and stewardship; (3) uses data from the National Healthcare Safety Network (NHSN) and other sources to target and improve the prevention and control healthcare-associated infections and antimicrobial resistance in the U.S. in specific regions, settings and institutions; (4) supports local, state, and national efforts to prevent HAI, antimicrobial resistance, and related adverse events by providing leadership and consultative services, including monitoring adherence to CDC-recommended practices; (5) provide leadership and epidemiologic support for the investigation, monitoring, and control of both recognized and emerging healthcare pathogens, including antimicrobial resistant bacteria; (6) leads response and control of outbreaks and emerging threats involving HAI and related adverse events, contaminated medical products and devices, and adverse drug events; (7) communicates the results of response activities with Federal and state agencies, healthcare providers, and the public, with recommendations to prevent similar adverse events in the future; and (8) provides leadership and expert consultation, guidance, and technical support to and collaborates with other CDC CIOs and divisions, other HHS Operating Divisions, and extramural domestic partners, on the epidemiology, prevention, and control of HAI, AR, and related adverse events; (9) implements state activities to prevent HAI and AR across healthcare; and (10) leads CDC activities to promote antimicrobial stewardship in all healthcare settings.

Surveillance Branch (CVLDD). (1) Monitors and evaluates on the national level the extent, distribution, and impact of HAI, antimicrobial use and resistance, adverse drug events, healthcare worker safety events, and adherence to clinical processes and intervention programs designed to prevent or control adverse exposures or outcomes in healthcare; (2) provides services, including leadership, consultation, and analysis support, for statistical methods and analysis to investigators in the branch, division, and other organizations responsible for surveillance, research studies, and prevention and control of HAI and other healthcare-associated adverse events; (3) works with the Centers for Medicare and Medicaid Services and other partners to develop new metrics and support maintenance of National Quality Forum-approved metrics; (4) collaborates with public and private sector partners to further standardize, integrate, and streamline systems by which healthcare organizations collect, manage, analyze, report, and respond to data on clinical guideline adherence, HAI, including transmission of multi-drug resistant organisms, and other HAI; (5) coordinates, further develops, enables wider use, and maintains NHSN to obtain scientifically valid clinical performance indices that promote healthcare quality and value at the facility, state, and national levels; (6) develops and implements new NHSN modules and provides enrollment and user support for NHSN; (7) improves surveillance systems by utilizing new technology; (8) generates and provides NHSN surveillance reports and analyses, which include collaborative analytic projects with partners; and (9) leads CDC's national adverse drug events surveillance activities and seeks to translate population-based surveillance data into evidence-based policies and targeted, innovative and collaborative interventions.

Immunization Safety Office (CVLDE). Assesses the safety of new and currently available vaccines received by children, adolescents and adults using a variety of strategies: (1) Conducts ongoing surveillance for the timely detection of possible adverse events following immunization (AEFI) in collaboration with the Food and Drug Administration (FDA), through coordination and management of the Vaccine Adverse Event Reporting System, the national reporting system that acts as an early-warning system to detect health conditions that may be associated with immunization; (2) coordinates, further develops, maintains and directs activities of the Vaccine Safety Datalink (VSD), a collaborative effort with integrated healthcare organizations, to conduct surveillance and investigate possible AEFI to assess causality and determine risk factors; (3) conducts epidemiologic research on causality of AEFI using the VSD and other data sources, and provides national estimates of incidence of AEFI and background rates of health conditions; (4) leads the nation in developing biostatistical methods for research of AEFI using large linked databases and other data sources, and shares methods for use by other Agencies and public and private entities; (5) conducts clinical research to identify causes of adverse events after immunization, specific populations susceptible to specific adverse events, and prevention strategies through the Clinical Immunization Safety Assessment network, a national network of medical research centers, and other efforts; (6) applies findings from epidemiologic and clinical studies to develop strategies for prevention of AEFI; (7) provides global consultation and leadership for the development, use, and interpretation of vaccine safety surveillance systems, and for the development of shared definitions of specific health outcomes through participation in the Brighton Collaboration and other international organizations; (8) provides data for action to HHS, the Advisory Committee on Immunization Practices, the FDA's Vaccine and Related Biological Products Advisory Committee, Health Resources and Services Administration's Advisory Commission on Childhood Vaccines, and collaborators around the globe including the WHO Global Advisory Committee on Vaccine Safety; and (9) provides timely, accurate communication and education to partners and the public on vaccine safety concerns.

Epidemiology Research and Innovations Branch (CVLDG). (1) Identifies and evaluates the efficacy of interventions to prevent HAI and related adverse events or medical errors across the spectrum of healthcare delivery sites including acute and long-term inpatient care, dialysis, and ambulatory settings; (2) identifies gaps in HAI-related knowledge, and conducts prevention research through the Prevention Epicenters cooperative agreements program and Safety and Healthcare Epidemiology Prevention Research Development research contracts; (3) conducts and supports research and evaluates impact of public health practices to prevent HAI, antimicrobial resistance, and related adverse events; (4) improves methods and enables wider use of clinical performance measurements by healthcare facilities and public health entities for specific interventions and prevention strategies designed to safeguard patients and healthcare workers from risk exposures and adverse outcomes through collaborations with extramural partners; (5) conducts applied research to identify and develop innovative methods to detect and monitor HAI and antimicrobial resistance; (6) conducts special studies to identify key risk factors for and provides national estimates of targeted, healthcare-associated adverse events, antimicrobial use and resistance patterns, and the extent to which prevention and control safeguards are in use to protect at-risk patients across the spectrum of healthcare delivery sites; (7) develops new ways to assess the impact of HAI prevention programs; (8) conducts analysis of the return on investment and costs related to prevention efforts and impact of HAI prevention programs; and (9) works with the Emerging Infections Program (EIP) and other partners to identify emerging issues.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2016–23213 Filed 9–26–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of

Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 81 FR 54091–54094, dated August 15, 2016) is amended to reflect the reorganization of the Office of the Director, National Center for Emerging and Zoonotic Infectious Diseases, Office of Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Insert item (10) ensures compliance with and manages the infectious diseases Clinical Laboratory Improvement Amendments (CLIA) unit within the *Office of Infectious Diseases (CV),* and renumber remaining items accordingly.

Delete item (5) ensures scientific quality and ethical and regulatory compliance of center activities within the *National Center for Emerging and Zoonotic Infectious Diseases (CVL), Office of the Director (CVL1),* and renumber remaining items accordingly.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2016–23212 Filed 9–26–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects:

Title: Voluntary Acknowledgement of Paternity and Required Data Elements for Paternity Establishment Affidavits.

OMB No.: 0970–0171.

Description: Section 466(a)(5)(C) of the Social Security Act requires States to enact laws ensuring a simple civil process for voluntarily acknowledging paternity via an affidavit. The development and use of an affidavit for the voluntary acknowledgment of paternity would include the minimum requirements of the affidavit specified by the Secretary under section 452(a)(7) and give full faith and credit to such an affidavit signed in any other State according to its procedures. The State must provide that, before a mother and putative father can sign a voluntary acknowledgement of paternity, the mother and putative father must be given notice, orally and in writing of the alternatives to, the legal consequences of, and the rights (including any rights, if one parent is a minor, due to minority status) and responsibilities of acknowledging paternity. The affidavits will be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program to collect information from the parents of nonmarital children.

Respondents: The parents of nonmarital children and State and Tribal IV–D agencies, hospitals, birth record agencies and other entities participating in the voluntary paternity establishment program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents/ partner	Number of responses per respondent/ partner	Average burden hours per response	Total burden hours
Training	130,330	1	1	130,300
Paternity Acknowledgment Process	2,606,596	1	0.17	443,121
Data Elements	54	1	1	54
Ordering Brochures	2,606,596	1	.08	208,528

Estimated Total Annual Burden Hours: 782,003.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35) Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–23274 Filed 9–26–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the 2018 Physical Activity Guidelines Advisory Committee

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act (FACA), the U.S. Department of Health and Human Services (HHS) is hereby giving notice that a meeting of the 2018 Physical Activity Guidelines Advisory Committee (2018 PAGAC or Committee) will be held. This meeting will be open to the public.

DATES: The meeting will be held on October 27, 2016, from 2:15 p.m. E.D.T. to 5 p.m. E.D.T. and on October 28, 2016, from 8:00 a.m. E.D.T. to 3:30 p.m. E.D.T.

ADDRESSES: The meeting will be accessible by webcast on the Internet or by attendance in-person. For in-person participants, the meeting will take place in the National Institutes of Health (NIH) Masur Auditorium, NIH Clinical Center, Building 10. The facility is located on the NIH Main Campus at 9000 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, 2018 Physical Activity Guidelines Advisory Committee, Richard D. Olson, M.D., M.P.H. and/or Alternate Designated Federal Officer, Katrina L. Piercy, Ph.D., R.D., Office of Disease Prevention and Health Promotion (ODPHP), Office of the Assistant Secretary for Health (OASH), HHS; 1101 Wootton Parkway, Suite LL–100; Rockville, MD 20852; Telephone: (240) 453–8280. Additional information is available at *www.health.gov/paguidelines.*

SUPPLEMENTARY INFORMATION: The inaugural *Physical Activity Guidelines for Americans* (PAG), issued in 2008, represents the first comprehensive guidelines on physical activity issued by the federal government. The PAG serves as the benchmark and primary, authoritative voice of the federal government for providing science-based guidance on physical activity, fitness, and health for Americans. Five years after the first edition was released, ODPHP, in collaboration with the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the President's Council on Fitness, Sports, and Nutrition (PCFSN) led development of the *PAG Midcourse Report: Strategies to Increase Physical Activity Among Youth.* The second edition of the PAG will build upon the first edition and provide a foundation for federal recommendations and education for physical activity programs for Americans, including those at risk for chronic disease.

Appointed Committee Members: The Secretary of HHS appointed 17 individuals to serve as members of the 2018 PAGAC in June 2016. Information on Committee membership is available at *www.health.gov/paguidelines/second-edition/committee/.*

Committee's Task: The work of the 2018 PAGAC will be time-limited and solely advisory in nature. The Committee will develop recommendations based on the preponderance of current scientific and medical knowledge using a systematic review approach. The Committee will examine the current PAG, take into consideration new scientific evidence and current resource documents, and develop a scientific report to the Secretary of HHS that outlines its science-based advice and recommendations for development of the second edition of the PAG. The Committee will hold approximately five public meetings to review and discuss recommendations. The first meeting was held in July 2016, and it is anticipated that future meetings will be held in the third weeks of March 2017, July 2017, and October 2017. Meeting dates, times, locations, and other relevant information will be announced at least 15 days in advance of each meeting via **Federal Register** notice. As stipulated in the charter, the Committee will be terminated after delivery of its report to the Secretary of HHS or two years from the date the charter was filed, whichever comes first.

Purpose of the Meeting: In accordance with FACA and to promote transparency of the process, deliberations of the Committee will occur in a public forum. At this meeting, the Committee will continue its deliberations from the last public meeting.

Meeting Agenda: The meeting agenda will include (a) opportunity for the public to give oral testimony, (b) review of Committee work since the last public meeting, and (c) plans for future Committee work.

Meeting Registration: The meeting is open to the public. The meeting will be accessible by webcast or by attendance in-person; pre-registration is required for either option. To pre-register, please visit *www.health.gov/paguidelines.* To request a special accommodation, please email *jennifer.gillissen@kauffmaninc.com.*

Webcast Public Participation: After pre-registration, individuals participating by webcast will receive webcast access information via email.

In-Person Public Participation and Building Access: For in-person participants, the meeting will be held within the National Institutes of Health (NIH) Masur Auditorium, NIH Clinical Center, Building 10, as noted above in the **ADDRESSES** section. Details regarding registration capacity and directions will be posted on *www.health.gov/paguidelines.* For in-person participants, check-in at the registration desk onsite at the meeting is required and will begin at 1:45 p.m. E.D.T. on October 27 and 7:30 a.m. E.D.T. on October 28. Please note that all visitors must enter through the NIH Gateway Center, which opens at 6:00 a.m. E.D.T. You will be asked to submit to a vehicle or personal inspection and provide a government-issued ID.

Public Comments and Meeting Documents: Written comments from the public will be accepted throughout the Committee's deliberative process; an opportunity to present oral comments to the Committee will be provided at this meeting. Those wishing to present oral comment must pre-register at *www.health.gov/paguidelines* no later than October 20. Written public comments can be submitted and/or viewed at *www.health.gov/paguidelines/pcd/.* Documents pertaining to Committee deliberations, including meeting agendas and summaries will be available on *www.health.gov/paguidelines.* Meeting information, thereafter, will continue to be accessible online and upon request at the Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852; Telephone: (240) 453–8280; Fax: (240) 453–8281.

Dated: September 14, 2016.

Don Wright,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion).

[FR Doc. 2016–23280 Filed 9–26–16; 8:45 am]

BILLING CODE 4150–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0001–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0001, which expires on December 31, 2016. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before November 28, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–5683.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0001–60D for reference.

Information Collection Request Title: Application for waiver of the two- year foreign residence requirement of the Exchange Visitor Program.

OMB No.: 0990–0001.

Abstract: The Office of Global Affairs (OGA) requests that OMB approves an extension on a previous approved collection, OMB # 0990–0001. The HHS program deals with both research and clinical care waivers. Applicant institutions apply to this Department to request a waiver on behalf of research scientists or foreign medical graduates to work as clinicians in HHS designated health shortage areas doing primary care in medical facilities. The instructions request a copy of Form G–28 from applicant institutions represented by legal counsel outside of the applying institution. United States Department of Justice Form G–28 ascertains that legal counsel represents both the applicant organization and the exchange visitor.

Need and Proposed Use of the Information: Required as part of the application process to collect basic information such as name, address, family status, sponsor and current visa information.

Likely Respondents: Research scientists and research facilities.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Application Waiver/Supplemental A Research	HHS 426	45	1	10	450
Application Waiver/Supplemental B Clinical Care	HHS 426	35	1	10	350
Total					800

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2016–23171 Filed 9–26–16; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Behavioral Health Statistics and Quality (CBHSQ) is requesting a revision to the National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119), which expires on February 28, 2017. The N–MHSS provides annual national and state-level data on the number and characteristics of mental health treatment facilities in the United States and biennial national and state-level data on the number and characteristics of persons treated in these facilities.

The N–MHSS will provide updated information about facilities for SAMHSA's online Behavioral Health Treatment Services Locator (see: *https://findtreatment.samhsa.gov*), which was last updated with information from the abbreviated N–MHSS (N–MHSS-Locator Survey) in 2015. An abbreviated N–MHSS (N–MHSS-Locator Survey) will be conducted in 2017 and 2019 to update the information about facilities in the online Locator. A full-scale N–MHSS will be conducted in 2018 to collect (1) information about facilities needed for updating the online Locator, such as the facility name and address, specific services offered, and special client groups served and (2) additional information about client counts and the demographics of persons treated in these facilities. Three small surveys are proposed for adding new facilities to the online Locator as they become known to SAMHSA. Both the 2017 N–MHSS-Locator Survey and the addition of new facilities to the online Locator will use the same N–MHSS-Locator Survey instrument.

This request for a revision seeks to change the content of the currently approved abbreviated N–MHSS (*i.e.*, N–MHSS-Locator) survey instrument, and the previously approved 2014 and 2016 full-scale N–MHSS (OMB No. 0930–0119) to accommodate two related N–MHSS activities:

(1) Collection of information from the total N–MHSS universe of mental health treatment facilities during 2017, 2018, and 2019; and

(2) collection of information on newly identified facilities throughout the year as they are identified so that new facilities can quickly be added to the online Locator.

The survey mode for both data collection activities will be web with telephone follow-up. A paper questionnaire will also be available to facilities who request one.

The database resulting from the N–MHSS will be used to update SAMHSA's online Behavioral Health Treatment Services Locator and to produce an electronic version of a national directory of mental health facilities, for use by the general public, behavioral health professionals, and treatment service providers. In addition, a data file derived from the survey will be used to produce a summary report providing national and state-level outcomes. The summary report and a public-use data file will be used by researchers, mental health professionals, State governments, the U.S. Congress, and the general public.

The request for OMB approval will include a request to conduct an abbreviated N–MHSS-Locator survey in 2017 and 2019, and the full-scale N–MHSS in 2018.

The following table summarizes the estimated annual response burden for the N–MHSS:

ESTIMATED ANNUAL RESPONSE BURDEN FOR THE N–MHSS

Type of respondent	Number of respondents	Responses per respondent	Average hours per response	Total burden hours
Facilities in N–MHSS-Locator Survey universe in 2017 and 2019	17,000	1	0.42	7,140
Newly identified facilities in Between-Survey Update in 2017, 2018, and 2019[1]	1,700	1	0.42	714
Facilities in full-scale N–MHSS universe in 2018	17,000	1	0.75	12,750
Average Annual Total	18,700	1	0.62	9,724

[1] Collection of information on newly identified facilities throughout the year, as they are identified, so that new facilities can quickly be added to the Locator.

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, MD 20857 *OR* email a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by November 28, 2016.

Summer King,

Statistician.

[FR Doc. 2016–23181 Filed 9–26–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5849–N–08]

Notice of a Federal Advisory Committee Meeting Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory committee meeting: Manufactured Housing Consensus Committee.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Manufactured Housing Consensus Committee (MHCC). The meeting is open to the public and the site is accessible to individuals with disabilities. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The meeting will be held on October 25 thru October 27, 2016, 9:00 a.m. to 5:00 p.m. Eastern Standard Time (EST) daily.

ADDRESSES: The meeting will be held at the Holiday Inn Washington—Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 9166, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation. The MHCC is deemed an advisory committee not composed of Federal employees.

II. Public Comments

Citizens wishing to comment on the business of the MHCC are encouraged to register by or before October 19, 2016, by contacting Home Innovation Research Labs; Attention: Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com* or call (888) 602–4663. Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the MHCC.

III. Tentative Agenda

Tuesday, October 25, 2016

I. Call to Order—Chair & Designated Federal Officer (DFO)
II. Opening Remarks—Chair
  A. Roll Call—Administering Organization (AO)
  B. Introductions
  i. HUD Staff
  ii. Guests
  C. Administrative Announcements—DFO and AO
III. Approve draft minutes from August 9, 2016, MHCC Meeting
IV. Update on approved proposals—HUD Staff
V. Subcommittee Reports to MHCC
  A. Technical Systems Subcommittee
  i. Log 113—NFPA 54 National Fuel Gas Code
  ii. Log 114—UL 60335–2–40, Safety of Household and Similar Electrical Appliances, Part 2–34: Particular Requirements for Motor-

Compressors
iii. Update about NFPA 70 Task Group recommendation
VI. Break
VII. Technical Systems Subcommittee Report—continued
VIII. Public Comment Period
IX. Lunch
X. Final Rule on Formaldehyde Presentation
XI. Break
XII. EPA final formaldehyde rule
  A. Log 80—Secondary method testing, and HUD's draft proposed rule incorporating the EPA rule
XIII. Daily Wrap Up—DFO/AO
XIV. Adjourn

Wednesday, October 26, 2016

I. Reconvene Meeting—Chair & Designated Federal Officer (DFO)
II. Remarks—Chair
  A. Roll Call—Administering Organization (AO)
III. Continue Review Current Log & Action Items (AI)—See Appendix A
IV. Break
V. HUD's recommended guidelines on foundation system requirements in freezing climates.
VI. Public Comment
VII. Lunch
VIII. Regulatory Enforcement Subcommittee
  A. Log 135—Water supply testing procedures.
IX. Continue review of EPA final formaldehyde rule
  A. Log 80—Secondary method testing, and HUD's draft proposed rule incorporating the EPA rule
X. Break
XI. Subcommittee Task Group Meeting Time Slot (only if necessary after MHCC has reviewed all Current Log and Action Items)
XII. Daily Wrap Up—DFO/AO
XIII. Adjourn

Thursday, October 27, 2016

I. Reconvene Meeting—Chair & Designated Federal Officer (DFO)
II. Remarks—Chair
  A. Roll Call—Administering Organization (AO)
III. Review Current Log and Action Items (AI)—See Appendix A
IV. Break
V. Continue review of HUD's recommended guidelines for foundation systems in freezing climates.
VI. Lunch
VII. MHCC recommendations for foundation systems in freezing climates.
VIII. Public Comment
IX. Daily Wrap Up—DFO/AO
X. Adjourn

Dated: September 21, 2016.

Pamela Beck Danner,

Administrator, Office of Manufactured Housing Programs.

[FR Doc. 2016–23256 Filed 9–26–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2016–N165; FXES11130600000–167–FF06E00000]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the survival of endangered species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

DATES: To ensure consideration, please send your written comments by October 27, 2016.

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice. You may use one of the following methods to request hard copies or a CD-ROM of the documents. Please specify the permit you are interested in by number (*e.g.,* Permit No. TE–XXXXXX).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (*e.g.,* Permit No. TE–XXXXXX) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (719) 628–2670 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Recovery Permits Coordinator, Ecological Services, (719) 628–2670 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The Act and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittees to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Documents and other information the applicants have submitted with their applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number TE047250

Applicant: Montana Fish, Wildlife and Parks, Helena, MT.

The applicant requests the renewal of their permit to continue surveying and monitoring activities for black-footed ferrets (*Mustela nigripes*) and pallid sturgeon (*Scaphirhynchus albus*) in Montana for the purpose of enhancing the species' survival. The applicant further requests that the pallid sturgeon portion of the permit be assigned a new number to separate the aquatic activities from the terrestrial activities.

Permit Application Number TE06447C

Applicant: Montana, Fish, Wildlife and Parks, Helena, MT.

The applicant requests the renewal and assignment of a new recovery permit number for presence/absence surveys of pallid sturgeon (*Scaphirhynchus albus*). Presence/absence surveys for the species are currently authorized under recovery permit TE047250. The request for a new permit number allows the applicant to separate authorized aquatic survey/monitoring activities and reporting from the authorized terrestrial activities. Newly assigned permit number TE06447C would allow for the continuation of presence/absence surveys for pallid sturgeon in Montana for the purpose of enhancing the species' survival.

Permit Application Number TE052627

Applicant: Toledo Zoological Gardens, Toledo, OH.

The applicant requests a renewal to propagate and rear Wyoming toad (*Bufo hemiophrys* ssp. *baxteri*) for reintroduction purposes to enhance the species' survival.

Permit Application Number TE04585C

Applicant: Fort Belknap Fish and Wildlife Department, Harlem, MT.

The applicant requests the renewal of their permit to continue presence/absence surveys for black-footed ferrets (*Mustela nigripes*) in Montana for the purpose of enhancing the species' survival.

Permit Application Number TE056003

Applicant: Detroit Zoological Society, Royal Oak, MI.

The applicant requests a renewal to propagate and rear Wyoming toad (*Bufo hemiophrys* ssp. *baxteri*) for reintroduction purposes to enhance the species' survival.

Permit Application Number TE06556C

Applicant: Bowen Collins and Associates, Draper, UT.

The applicant requests a recovery permit for presence/absence surveys for Southwestern willow flycatcher (*Empidonax traillii extimus*) in Utah to enhance the species' survival.

National Environmental Policy Act

The proposed activities in the requested permits qualify as categorical exclusions under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

Public Availability of Comments

All comments and materials we receive in response to these requests will be available for public inspection, by appointment, during normal business hours at the address listed above in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2016–23231 Filed 9–26–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Submission of Information Collections Under the Paperwork Reduction Act

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Second notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is announcing its submission, concurrently with the publication of this notice or soon thereafter, of the following information collection requests to the Office of Management and Budget (OMB) for review and approval.

The Commission is seeking comments on the renewal of information collections for the following activities: (i) Compliance and enforcement actions under the Indian Gaming Regulatory Act as authorized by OMB Control Number 3141–0001; (ii) tribal gaming ordinance approvals, background investigations, and issuance of licenses as authorized by OMB Control Number 3141–0003; (iii) National Environmental Policy Act submissions as authorized by OMB Control Number 3141–0006; and (iv) issuance to tribes of certificates of self-regulation for class II gaming as authorized by OMB Control Number 3141–0008. These information collections all expire on October 31, 2016.

DATES: The OMB has up to 60 days to approve or disapprove the information collection requests, but may respond after 30 days. Therefore, public comments should be submitted to OMB by no later than October 27, 2016 in order to be assured of consideration.

ADDRESSES: Submit comments directly to OMB's Office of Information and Regulatory Affairs, Attn: Policy Analyst/Desk Officer for the National Indian Gaming Commission. Comments can also be emailed to *OIRA_Submission@omb.eop.gov*, include reference to "NIGC PRA Renewals" in the subject line.

FOR FURTHER INFORMATION CONTACT: For further information, including copies of the proposed collections of information and supporting documentation, contact Tim Osumi at (202) 632–7054; fax (202) 632–7066 (not toll-free numbers). You may also review these information collection requests by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency: National Indian Gaming Commission).

SUPPLEMENTARY INFORMATION:

I. Abstract

The gathering of this information is in keeping with the purposes of the Indian Gaming Regulatory Act of 1988 (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701, *et seq.*, which include: Providing a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of the Commission, are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702. The Act established the Commission and laid out a comprehensive framework for the regulation of gaming on Indian lands.

II. Data

Title: Indian Gaming Compliance and Enforcement.

OMB Control Number: 3141–0001.

Brief Description of Collection: Although IGRA places primary responsibility with the tribes for regulating their gaming activities, 25 U.S.C. 2706(b) directs the Commission to monitor gaming conducted on Indian lands on a continuing basis. Amongst other actions necessary to carry out the Commission's statutory duties, the Act authorizes the Commission to access and inspect all papers, books, and records relating to gross revenues of a gaming operation. The Act also requires tribes to provide the Commission with annual independent audits of their gaming operations, including audits of all contracts in excess of $25,000. 25 U.S.C. 2710(b)(2)(C), (D); 2710(d)(1)(A)(ii). The Act also authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). Part 571 of title 25, Code of Federal Regulations, implements these statutory requirements.

Section 571.7(a) requires Indian gaming operations to keep/maintain permanent books of account and records sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other relevant financial information. Section 571.7(c) requires that these records be kept for at least five years. Under § 571.7(b), the Commission may require a gaming operation to submit statements, reports, accountings, and specific records that will enable the NIGC to determine whether or not such operation is liable for fees payable to the Commission (and in what amount). Section 571.7(d) requires a gaming operation to keep copies of all enforcement actions that a tribe or a state has taken against the operation.

Section 571.12 requires tribes to prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands, and to engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation. Section 571.13 requires tribes to prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits, together with management letter(s) and other documented auditor communications and/or reports as a result of the audit, setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of the fiscal year of each gaming operation, including when a gaming operation changes its fiscal year or when gaming ceases to operate. Section 571.14 requires tribes to reconcile quarterly fee reports with audited financial statements and to keep/maintain this information to be available to the NIGC upon request in order to facilitate the performance of compliance audits.

This information collection is mandatory and allows the Commission to fulfill its statutory responsibilities under IGRA to regulate gaming on Indian lands.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 931.

Estimated Annual Responses: 931.

Estimated Time per Response: Depending on the type of information collection, the range of time can vary from 40 burden hours to 1,105 burden hours for one item.

Frequency of Responses: 1 per year.

Estimated Total Annual Burden Hours on Respondents: 406,905.

Estimated Total Non-hour Cost Burden: $34,349,884.

Title: Approval of Class II and Class III Ordinances, Background Investigations, and Gaming Licenses.

OMB Control Number: 3141–0003.

Brief Description of Collection: The Act sets standards for the regulation of gaming on Indian lands, including requirements for the approval or disapproval of tribal gaming ordinances. Specifically, § 2705(a)(3) requires the NIGC Chair to review all class II and class III tribal gaming ordinances. Section 2710 sets forth the specific requirements for the tribal gaming ordinances, including the requirement that there be adequate systems in place: To cause background investigations to be conducted on individuals in key employee and primary management official (PMO) positions (§ 2710(b)(2)(F)(i)); and to provide two prompt notifications to the Commission, including one containing the results of the background investigations before the issuance of any gaming licenses, and the other one of the issuance of such gaming licenses to key employees and PMOs (§ 2710(b)(2)(F)(ii)). In addition, § 2710(d)(2)(D)(ii) requires tribes who have, in their sole discretion, revoked any prior class III ordinance or resolution to submit a notice of such revocation to the NIGC Chair. The Act also authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). Parts 519, 522, 556, and 558 of title 25, Code of Federal Regulations, implement these statutory requirements.

Sections 519.1 and 519.2 require a tribe, management contractor, and a tribal operator to designate an agent for service of process, and § 522.2(g) requires it to be submitted by written notification to the Commission. Section 522.2(a) requires a tribe to submit a copy of an ordinance or resolution certified as authentic, and that meets the approval requirements in 25 CFR 522.4(b) or 522.6. Sections 522.10 and 522.11 require tribes to submit, respectively, an ordinance for the licensing of individually owned gaming operations other than those operating on September 1, 1986, and for the licensing of individually owned gaming operations operating on September 1, 1986. Section 522.3(a) requires a tribe to submit an amendment to an ordinance or resolution within 15 days after adoption of such amendment.

Section 522.2(b)–(h) requires tribes to submit to the Commission: (i) Procedures that the tribe will employ in conducting background investigations on key employees and PMOs, and to ensure that key employees and PMOs are notified of their rights under the Privacy Act; (ii) procedures that the tribe will use to issue licenses to key employees and PMOs; (iii) copies of all tribal gaming regulations; (iv) a copy of any applicable tribal-state compact or procedures as prescribed by the Secretary of the Interior; (v) procedures for resolving disputes between the gaming public and the tribe or the management contractor; and (vi) the identification of the law enforcement agent that will take fingerprints and the procedures for conducting criminal history checks, including a check of criminal history records information maintained by the Federal Bureau of Investigation. Section 522.3(b) requires a tribe to submit any amendment to these submissions within 15 days after adoption of such amendment. Section 522.12(a) requires a tribe to submit to the Commission a copy of an authentic ordinance revocation or resolution.

Section 556.4 requires tribes to mandate the submission of the following information from applicants for key employee and PMO positions: (i) Name(s), Social Security number(s), date and place of birth, citizenship, gender, and languages; (ii) present and past business and employment positions, ownership interests, business and residential addresses, and driver's license number(s); (iii) the names and addresses of personal references; (iv) current business and personal telephone numbers; (v) a description of any existing and previous business relationships with Indian tribes, including ownership interests; (vi) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests; (vii) the name and address of any licensing/regulatory agency with which the person has filed an application for a license or permit related to gaming, even if the license or permit was not granted; (viii) for each ongoing felony prosecution or conviction, the charge, the name and address of the court, and the date and disposition, if any; (ix) for each misdemeanor conviction or ongoing prosecution within the past 10 years, the name and address of the court and the date and disposition; (x) for each criminal charge in the past 10 years that is not otherwise listed, the criminal charge, the name and address of the court, and the date and disposition; (xi) the name and address of any licensing/regulatory agency with which the person has filed an application for an occupational license or permit, even if the license or permit was not granted; (xii) a photograph; and (xiii) fingerprints. Sections 556.2 and 556.3 require tribes to place a specific Privacy Act notice on their key employee and PMO applications, and to warn applicants regarding the penalty for false statements by also placing a specific false statement notice on their applications.

Sections 556.6(a) and 558.3(e) require tribes to keep/maintain the individuals' complete application files, investigative reports, and eligibility determinations during their employment and for at least three years after termination of their employment. Section 556.6(b)(1) requires tribes to create and maintain an investigative report on each background investigation that includes: (i) The steps taken in conducting a background investigation; (ii) the results obtained; (iii) the conclusions reached; and (iv) the basis for those conclusions. Section 556.6(b)(2) requires tribes to submit, no later than 60 days after an applicant begins work, a notice of results of the applicant's background investigation that includes: (i) The applicant's name, date of birth, and Social Security number; (ii) the date on which the applicant began or will begin work as a key employee or PMO; (iii) a summary of the information presented in the investigative report; and (iv) a copy of the eligibility determination.

Section 558.3(b) requires a tribe to notify the Commission of the issuance of PMO and key employee licenses within 30 days after such issuance. Section 558.3(d) requires a tribe to notify the Commission if the tribe does not issue a license to an applicant, and requires it to forward copies of its eligibility determination and notice of results to the Commission for inclusion in the Indian Gaming Individuals Record System. Section 558.4(e) requires a tribe, after a gaming license revocation hearing, to notify the Commission of its decision to revoke or reinstate a gaming license within 45 days of receiving notification from the Commission that a specific individual in a PMO or key employee position is not eligible for continued employment.

These information collections are mandatory and allow the Commission to carry out its statutory duties.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 1,597.

Estimated Annual Responses: 202,509.

Estimated Time per Response: Depending on the type of information collection, the range of time can vary from 1.0 burden hour to 1,483 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 1,121,340.

Estimated Total Non-hour Cost Burden: $3,070,189.

Title: NEPA Compliance.

OMB Control Number: 3141–0006.

Brief Description of Collection: The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, and the Council on Environmental Quality's (CEQ) implementing regulations, require federal agencies to prepare (or cause to be prepared) environmental documents for agency actions that may have a significant impact on the environment. Under NEPA, an Environmental Assessment (EA) must be prepared when the agency action cannot be categorically excluded, or the environmental consequences of the agency action will not result in a significant impact or the environmental impacts are unclear and need to be further defined. An Environmental Impact Statement (EIS) must be prepared when the agency action will likely result in significant impacts to the environment.

Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires the NIGC Chair to review and approve third-party management contracts that involve the operation of tribal gaming facilities. 25 U.S.C. 2711. The Commission has taken the position that the NEPA process is triggered when a tribe and a potential contractor seek approval of a management contract. Normally, an EA or EIS and its supporting documents are prepared by an environmental consulting firm and submitted to the Commission by the tribe. In the case of an EA, the Commission independently evaluates the NEPA document, verifies its content, and assumes responsibility for the accuracy of the information contained therein. In the case of an EIS, the Commission directs and is responsible for the preparation of the NEPA document, but the tribe or potential contractor is responsible for paying for the preparation of the document. The information collected includes, but is not limited to, maps, charts, technical studies, correspondence from other agencies (federal, tribal, state, and local), and comments from the public. These information collections are mandatory and allow the Commission to carry out its statutory duties.

Respondents: Tribal governing bodies, management contractors.

Estimated Number of Respondents: 3.

Estimated Annual Responses: 3.

Estimated Time per Response: Depending on whether the response is an EA or an EIS, the range of time can vary from 2.5 burden hours to 12.0 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 26.5.

Estimated Total Non-hour Cost Burden: $14,846,686.

Title: Issuance of Certificates of Self-Regulation to Tribes for Class II Gaming.

OMB Control Number: 3141–0008.

Brief Description of Collection: The Act sets the standards for the regulation of Indian gaming, including a framework for the issuance of certificates of self-regulation for class II gaming operations to tribes that meet certain qualifications. Specifically, 25 U.S.C. 2710(c) authorizes the Commission to issue a certificate of self-regulation if it determines that a tribe has: (i) Conducted its gaming activity in a manner that has resulted in an effective and honest accounting of all revenues, in a reputation for safe, fair, and honest operation of the activity, and has been generally free of evidence of criminal or dishonest activity; (ii) adopted and is implementing adequate systems for the accounting of all revenues from the activity, for the investigation, licensing, and monitoring of all employees of the gaming activity, and for the investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations; and (iii) conducted the operation on a fiscally and economically sound basis. The Act also authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement" IGRA. 25 U.S.C. 2706(b)(10). Part 518 of title 25, Code of Federal Regulations, implements these statutory requirements.

Section 518.3(e) requires a tribe's gaming operation(s) and the tribal regulatory body (TRB) to have kept all records needed to support the petition for self-regulation for the three years immediately preceding the date of the petition submission. Section 518.4 requires a tribe petitioning for a certificate of self-regulation to submit the following to the Commission, accompanied by supporting documentation: (i) Two copies of a petition for self-regulation approved by the tribal governing body and certified as authentic; (ii) a description of how the tribe meets the eligibility criteria in § 518.3; (iii) a brief history of each gaming operation, including the opening dates and periods of voluntary or involuntary closure(s); (iv) a TRB organizational chart; (v) a brief description of the criteria that individuals must meet before being eligible for employment as a tribal regulator; (vi) a brief description of the process by which the TRB is funded, and the funding level for the three years immediately preceding the date of the petition; (vii) a list of the current regulators and TRB employees, their complete resumes, their titles, the dates that they began employment, and if serving limited terms, the expiration date of such terms; (viii) a brief description of the accounting system(s) at the gaming operation that tracks the flow of the gaming revenues; (ix) a list of the gaming activity internal controls at the gaming operation(s); (x) a description of the recordkeeping system(s) for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three-year period immediately preceding the date of the petition; and (xi) the tribe's current set of gaming regulations, if not included in the approved tribal gaming ordinance. Section 518.10 requires each Indian gaming tribe that has been issued a certificate of self-regulation to submit to the Commission the following information by April 15th of each year following the first year of self-regulation, or within 120 days after the end of each gaming operation's fiscal year: (i) An annual independent audit; and (ii) a complete resume for all TRB employees hired and licensed by the tribe subsequent to its receipt of a certificate of self-regulation.

Submission of the petition and supporting documentation is voluntary. Once a certificate of self-regulation has been issued, the submission of certain other information is mandatory.

Respondents: Tribal governments.

Estimated Number of Respondents: 7.

Estimated Annual Responses: 7.

Estimated Time per Response: Depending on the information collection, the range of time can vary from 3.66 burden hours to 1,940 burden hours for one item.

Frequency of Responses: One per year.

Estimated Total Annual Burden Hours on Respondents: 2,092.

Estimated Total Non-hour Cost Burden: $821,545.

III. Request for Comments

Regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, require that interested members of the public have an opportunity to comment on an agency's information collection and recordkeeping activities. *See* 5 CFR 1320.8(d). To comply with the public consultation process, the Commission previously published its 60-day notice of its intent to submit the above-mentioned information collection requests to OMB for approval. *See* 81 FR 36322 (June 6, 2016). The Commission did not receive any comments in response to that notice and request for comments.

The Commission will submit the preceding requests to OMB to renew its approval of the information collections. The Commission is requesting a three-year term of approval for each of these information collection and recordkeeping activities.

You are again invited to comment on these collections concerning: (i) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and cost) of the proposed collections of information, including the validity of the methodologies and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology. It should be noted that as a result of the Commission reviewing its own records that track the number of tribal and/or management contractor submissions and after surveying tribal gaming operators, tribal gaming regulatory authorities, and/or management contractors regarding the Commission's submission and recordkeeping requirements, many of the previously published burden estimates have changed since the publication of the Commission's 60-day notice on June 6, 2016. If you wish to comment in response to this notice, you may send your comments to the office listed under the **ADDRESSES** section of this notice by October 27, 2016.

Comments submitted in response to this second notice will be summarized and become a matter of public record. The NIGC will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid OMB Control Number.

Dated: September 21, 2016.

Shannon O'Loughlin,

Chief of Staff.

[FR Doc. 2016–23221 Filed 9–26–16; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–CHOH–21883]; [PPNCCHOHS0–PPMPSPD1Z.YM0000]

Notice of October 6, 2016, Meeting of the Chesapeake and Ohio Canal National Historical Park Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the meeting date of the Chesapeake and Ohio Canal National Historical Park Commission.

DATES: The public meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held on Thursday, October 6, 2016, at 9:00 a.m. (EASTERN).

ADDRESSES: The meeting of the Commission will be held on Thursday, October 6, 2016, at 9:00 a.m., in the second floor conference room at park headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Kevin D. Brandt, Superintendent and Designated Federal Officer, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland, 21740–6620, or by email *kevin_brandt@nps.gov.*

SUPPLEMENTARY INFORMATION: The Commission is established by Section 6 of the Chesapeake and Ohio Canal Development Act (16 U.S.C. 410y–4), Public Law 91–664, 84 Stat. 1978 (1971), as amended, and is regulated by the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix 1–16. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of the Chesapeake and Ohio Canal National Historical Park, and with respect to carrying out the provisions of section 6 establishing the Canal.

The agenda for the meeting is as follows:

1. Welcome and Introductions

2. History of the Chesapeake and Ohio Canal National Historical Park Commission
3. Review of Commission Charter
4. Review of Federal Advisory Committee Act
5. Discussion of General Policies and Specific Matters Related to the Administration of the Park

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Exceptional Circumstance: Pursuant to the Federal Advisory Committee Management Regulations (41 CFR 102–3.150), the notice for this meeting is given less than 15 calendar days prior to the meeting due to exceptional circumstances. Given the exceptional urgency of the events, the agency and advisory committee deemed it important for the advisory committee to meet on the date given to discuss policies and specific matters related to the administration of the park.

Alma Ripps,
Chief, Office of Policy.

[FR Doc. 2016–23035 Filed 9–26–16; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–564 and 731–TA–1338–1340 (Preliminary)]

Steel Concrete Reinforcing Bar (Rebar) From Japan, Taiwan, and Turkey; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–564 and 731–TA–1338–1340 (Preliminary) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of steel concrete reinforcing bar (rebar) from Japan, Taiwan, and Turkey, provided for in subheadings 7213.10.00, 7214.20.00, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Turkey. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by November 4, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by November 14, 2016.

DATES: *Effective Date:* September 20, 2016.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888 or *joanna.lo@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on September 20, 2016, by the Rebar Trade Action Coalition and its individual members: Bayou Steel Group, LaPlace, LA; Byer Steel Group, Inc., Cincinnati, OH; Commercial Metals Company, Irving, TX; Gerdau Ameristeel U.S. Inc., Tampa, FL; Nucor Corporation, Charlotte, NC; and Steel Dynamics, Inc., Pittsboro, IN.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Tuesday, October 11, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *william.bishop@usitc.gov* and *sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before October 6, 2016. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 14, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this/these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 21, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–23207 Filed 9–26–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–994]

Certain Portable Electronic Devices and Components Thereof; Commission Determination Not To Review the 100-Day Initial Determination Finding the Asserted Claims of U.S. Patent No. 6,928,433 Invalid Under 35 U.S.C. 101; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the 100-day initial determination ("ID") of the presiding administrative law judge ("ALJ") finding the asserted claims of U.S. Patent No. 6,928,433 invalid under 35 U.S.C. 101. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337–TA–994 on May 11, 2016, based on a complaint filed by Creative Technology Ltd. of Singapore and Creative Labs, Inc. of Milpitas, California (collectively, "Creative"). *See* 81 FR 29307 (May 11, 2016). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable electronic devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,928,433 ("the '433 patent"). The notice of investigation named the following respondents: ZTE Corporation of Guangdong, China; ZTE (USA) Inc. of Richardson, Texas; Sony Corporation of Tokyo, Japan; Sony Mobile Communications, Inc. of Tokyo, Japan; Sony Mobile Communications AB of Lund, Sweden; Sony Mobile Communications (USA), Inc. of Atlanta, Georgia; Samsung Electronics Co., Ltd. of Seoul, Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; LG Electronics, Inc. of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; LG Electronics Mobilecomm U.S.A., Inc. of San Diego, California; Lenovo Group Ltd. of Beijing, China; Lenovo (United States) Inc. of Morrisville, North Carolina; Motorola Mobility LLC of Chicago, Illinois; HTC Corporation of Taoyuan, Taiwan; HTC America, Inc. of Bellevue, Washington; Blackberry Ltd. of Waterloo, Ontario, Canada; and Blackberry Corporation of Irving, Texas (collectively, "Respondents"). In addition, on May 19, 2016, the ALJ issued an initial determination granting Google Inc.'s ("Intervenor") motion to intervene as a party in the investigation. *See* Order No. 5, *unreviewed,* Comm'n Notice (U.S.I.T.C. June 21, 2016). The Office of Unfair Import Investigations (OUII) is also a party to the investigation.

The notice of investigation also directed the ALJ to "hold an early evidentiary hearing, find facts, and issue an early decision, as to whether the asserted claims of the '433 patent recite patent-eligible subject matter under 35 U.S.C. 101" (*i.e.,* the 100-day pilot program). *See* 81 FR 29307 (May 11, 2016).

Accordingly, the ALJ conducted an evidentiary hearing on July 6–7, 2016, and on August 19, 2016, within 100 days of institution, the ALJ issued his ID finding that the asserted claims are directed to ineligible subject matter (*i.e.,* invalid) under 35 U.S.C. 101. In addition, although the ID noted that construction of the disputed term "portable media player" was not necessary to decide patent-eligibility under 35 U.S.C. 101, the ALJ construed the term to mean "portable media playback device, as distinguished from a general-purpose device such as a handheld computer or a personal digital assistant."

On August 29, 2016, Creative filed a petition for review and on September 1, 2016, Respondents, Intervenor, and OUII filed replies in opposition to Creative's petition.

The Commission has determined not to review the ID. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 21, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–23243 Filed 9–26–16; 8:45 am]

BILLING CODE 7020–02–P

LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2015–8]

Section 1201 Study: Request for Additional Comments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The United States Copyright Office is requesting additional written comments in connection with its ongoing study on the operation of the statutory provisions regarding the circumvention of copyright protection systems. This request provides an opportunity for interested parties to address certain issues raised by various members of the public in response to the Office's initial Notice of Inquiry.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on October 27, 2016. Written reply comments must be received no later than 11:59 p.m. Eastern Time on November 16, 2016.

ADDRESSES: The Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/policy/1201/commentsubmission/*. If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Kevin R. Amer, Senior Counsel for Policy and International Affairs, by email at *kamer@loc.gov* or by telephone at 202–707–8350; or Regan A. Smith, Associate General Counsel, by email at *resm@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

At the request of the Ranking Member of the House Committee on the Judiciary, the Copyright Office is conducting a study to assess the operation of section 1201 of title 17. In December 2015, the Office issued a Notice of Inquiry identifying several aspects of the statutory and regulatory framework that the Office believes are ripe for review, and inviting public comment on those and any other pertinent issues.[1] The Notice provided for two rounds of written comments. In response, the Office received sixty-eight initial comments and sixteen reply comments.[2] The Office then announced public roundtables on the topics addressed in the Notice and comments.[3] These sessions, held in Washington, DC and San Francisco, California in May 2016, involved participation by more than thirty panelists, representing a wide range of interests and perspectives. Transcripts of the roundtables are available at *http://copyright.gov/policy/1201/*, and video recordings will be available at that location at a later date.

In the written comments and during the roundtables, parties expressed a variety of views regarding whether legislative amendments to section 1201 may be warranted. Among other suggested changes, commenters discussed proposals to update the statute's permanent exemption framework and to amend the anti-trafficking provisions to permit third-party assistance with lawful circumvention activities. At this time, as explained below, the Office is interested in receiving additional stakeholder input on particular aspects of those proposals. In addition, parties submitted numerous and varied views regarding the triennial rulemaking process under section 1201(a)(1)(C); while the Office continues to thoroughly evaluate these comments in conducting its study, this second Notice of Inquiry does not specifically address those issues.

A party choosing to respond to this Notice of Inquiry need not address every topic below, but the Office requests that responding parties clearly identify and separately address those subjects for which a response is submitted. Parties also are invited to address any other pertinent issues that the Office should consider in conducting its study.

II. Subjects of Inquiry

1. Proposals for New Permanent Exemptions

a. *Assistive Technologies for Use by Persons Who Are Blind, Visually Impaired, or Print Disabled.* The written comments and roundtable discussions revealed widespread support for adoption of a permanent exemption to facilitate access to works in electronic formats by persons who are blind, visually impaired, or print disabled. The Office invites comment regarding specific provisions that commenters believe should be included in legislation proposing such an exemption. For example, the exemption for this purpose granted in the 2015 rulemaking permits circumvention of access controls applied to literary works distributed electronically, where the access controls "either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies."[4] The exemption applies in the following circumstances:

> (i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels, or
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> (ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.[5]

The Office is interested in commenters' views on whether this language would be appropriate for adoption as a permanent exemption, or whether there are specific changes or additional provisions that Congress may wish to consider.

b. *Device Unlocking.* Some commenters advocated the adoption of a permanent exemption to permit circumvention of access controls on wireless devices for purposes of

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[1] Section 1201 Study: Notice and Request for Public Comment, 80 FR 81369 (Dec. 29, 2015).

[2] All comments may be accessed from the Copyright Office Web site at *http://copyright.gov/policy/1201/* by clicking the "Public Comments" tab, followed by the "Comments" link.

[3] Software-Enabled Consumer Products Study and Section 1201 Study: Announcement of Public Roundtables, 81 FR 17206 (Mar. 28, 2016).

[4] Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 80 FR 65944, 65950 (Oct. 28, 2015) ("2015 Final Rule").

[5] *Id.*

"unlocking" such devices—*i.e.*, enabling them to connect to the network of a different mobile wireless carrier. Since 2006, the rulemaking process has involved consideration of exemptions permitting unlocking of cellphones, and in the 2015 rulemaking, pursuant to Congress's direction,[6] the Register considered whether to extend the exemption to other categories of wireless devices. At the conclusion of the 2015 proceeding, the Librarian, upon the Register's recommendation, adopted an unlocking exemption that applies to used wireless devices of the following types:

(A) Wireless telephone handsets (*i.e.*, cellphones);

(B) All-purpose tablet computers;

(C) Portable mobile connectivity devices, such as mobile hotspots, removable wireless broadband modems, and similar devices; and

(D) Wearable wireless devices designed to be worn on the body, such as smartwatches or fitness devices.[7]

The Office invites comment on whether an unlocking exemption would be appropriate for adoption as a permanent exemption or whether such activities are more properly considered as part of the triennial rulemaking. For commenters who favor consideration of a permanent exemption, the Office is interested in commenters' views on whether the language of the 2015 unlocking exemption would be appropriate for adoption as a permanent exemption, or whether there are specific changes or additional provisions that Congress may wish to consider.

c. *Computer Programs.* Several commenters expressed concern over the scope of section 1201 in the context of copyrighted computer programs that enable the operation of a machine or device. These commenters suggested that by prohibiting the circumvention of access controls on such programs, the statute prevents the public from engaging in legitimate activities, such as the repair of automobiles or the use of third-party device components, that seem far removed from the protection of creative expression that section 1201 was intended to address. To respond to this concern, some commenters argued that Congress should establish a statutory exemption that would permit circumvention of technological protection measures ("TPM"s) controlling access to such software in appropriate circumstances. The Office is interested in additional views on such proposals.

For purposes of focusing the discussion, the Office invites comment on whether there are specific formulations of such an exemption that could serve as helpful starting points for further consideration of legislation. For example, Congress could consider adoption of a permanent exemption for purposes of diagnosis, maintenance, and repair. Such legislation could provide that a person who has lawfully obtained the right to use a computer program may circumvent a TPM controlling access to that program, so long as the circumvention is undertaken for purposes of diagnosis, maintenance, or repair. Are existing legal doctrines or statutes, such as the current language addressing machine maintenance and repair in section 117(c),[8] the doctrine of repair and reconstruction in patent law,[9] case law addressing refurbishment under trademark law,[10] or "right to repair" bills introduced into various state legislatures,[11] helpful to inform the appropriate scope of repair in this context? To what extent would the combination of such an exemption with the current language of 1201(f)[12]—which allows circumvention for purposes of facilitating interoperability under certain circumstances—adequately address users' concerns regarding section 1201's impact on consumer activities?

Please also comment upon whether it would be advisable to consider, in addition to diagnosis, maintenance, or repair, an exemption to explicitly permit circumvention for purposes of engaging in any lawful modification of a computer program. Such an exemption could allow circumventions undertaken to make non-infringing adaptations, including, for example, uses permitted under section 117(a) and/or the fair use doctrine.[13] Please address whether this broader formulation would, or would not, be likely to result in economically harmful unauthorized uses of copyrighted works.

With either formulation, would concerns over enabling unauthorized uses be mitigated by conditioning the exemption on the circumventing party not engaging in any unauthorized use of a copyrighted work other than the accessed computer program, or by limiting the exemption to computer programs that are "not a conduit to protectable expression"—*i.e.*, those that do "not in turn create any protected expression" when executed?[14] In the United Kingdom, for example, the prohibition on circumvention specifically excludes TPMs applied to computer programs, but does apply in at least some circumstances where copyrighted content is generated by a computer program (*e.g.*, graphical content in video games).[15] The Office is particularly interested in any information or perspectives on the impact of the UK law and how operating under it contrasts or not with the U.S. experience. Alternatively, should the exemption be limited to computer programs in particular categories of devices?

The Office is interested in commenters' views on the advisability of these various approaches. Which of these models, if any, would facilitate users' ability to engage in permissible uses of software, while preserving congressional intent in supporting new ways of disseminating copyrighted materials to users?[16] Responding parties are also encouraged to suggest alternate formulations, keeping in mind the Office's goal of focusing discussion on this topic.

d. *Obsolete Technologies.* In prior rulemakings, the Copyright Office and the Librarian of Congress have considered multiple petitions to permit circumvention of an access control mechanism protecting a given class of works that fails to permit access because of malfunction, damage, or obsoleteness.[17] The Office has

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[6] *See* Unlocking Consumer Choice and Wireless Competition Act, Public Law 113–144, sec. 2(b), 128 Stat. 1751, 1751 (2014).

[7] 2015 Final Rule, 80 FR at 65952.

[8] 17 U.S.C. 117(c).

[9] *See Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 365 U.S. 336 (1961); *see also Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 377 U.S. 476 (1964).

[10] *See Champion Spark Plug Co.* v. *Sanders,* 331 U.S. 125 (1947); *see also Karl Storz Endoscopy-America, Inc.* v. *Fiber Tech Med., Inc.*, 4 F. App'x 128, 131–32 (4th Cir. 2001) ("[T]he Lanham Act does not apply in the narrow category of cases where a trademarked product is repaired, rebuilt or modified at the request of the product's owner," so long as "the owner is not, to the repairer's knowledge, merely obtaining modifications or repairs for purposes of resale.").

[11] *See, e.g.*, H.R. 3383, 189th Gen. Ct. (Mass. 2015); S. 3998B, 2015 Leg., Reg. Sess. (N.Y. 2015); Assemb. 6068A, 2015 Leg., Reg. Sess. (N.Y. 2015); Legis. B. 1072, 104th Leg., 2d Sess. (Neb. 2016); H.R. 1048, 89th Leg., Reg. Sess. (Minn. 2015); *see also* Mass. Gen. Laws ch. 93K (2013).

[12] 17 U.S.C. 1201(f).

[13] *See* 17 U.S.C. 117(a), 107.

[14] *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 387 F.3d 522, 548 (6th Cir. 2004).

[15] Copyright, Designs and Patents Act 1988, c. 48, § 296ZA (UK); *see Nintendo Co. Ltd.* v. *Playables Ltd.* [2010] EWHC 1932 (Ch) (Eng.) (construing related anti-trafficking provision).

[16] *See* Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4th, 1998, at 6 (Comm. Print 1998).

[17] *See, e.g.*, Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64556, 64564–66, 64574 (Oct. 27, 2000) ("2000 Recommendation and Final Rule"); Exemption to Prohibition on Circumvention of Copyright Protection Systems for

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recommended, and the Librarian has adopted, multiple exemptions after finding that the definition of "obsolete" in section 108 captures the circumstances under which such an exemption was justified, *i.e.*, where the access control "is no longer manufactured or is no longer reasonably available in the commercial marketplace."[18] The Office is interested in commenters' views on whether Congress should consider a legislative amendment to permit circumvention of such faulty access controls, or whether there are other specific changes or additional provisions that Congress may wish to consider to address this issue.

e. *International Considerations.* In addition to the questions on specific proposals provided above, please discuss the interaction of these proposals with existing international obligations of the United States, including free trade agreements.

2. Proposed Amendments to Existing Permanent Exemptions

Some parties expressed the view that the existing permanent exemptions for security testing, encryption research, and reverse engineering[19] do not adequately accommodate good-faith research into malfunctions, security flaws, and vulnerabilities in computer programs.[20] The Office invites comment on whether legislation to address this concern may be warranted, and if so, on specific changes that should be considered. In particular, the Office requests commenters' views on the following topics:

a. In the 2015 rulemaking, the Register recommended, and the Librarian of Congress adopted, an exemption that permits circumvention of TPMs controlling access to computer programs in the following circumstances:

> (i) . . . the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates solely for the purpose of good-faith security research and does not violate any applicable law, including without limitation the Computer Fraud and Abuse Act of 1986, as amended and codified in title 18, United States Code; . . . and the device or machine is one of the following:
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> (A) A device or machine primarily designed for use by individual consumers (including voting machines);
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> (B) A motorized land vehicle; or
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> (C) A medical device designed for whole or partial implantation in patients or a corresponding personal monitoring system, that is not and will not be used by patients or for patient care.
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> (ii) For purposes of this exemption, "good-faith security research" means accessing a computer program solely for purposes of good-faith testing, investigation and/or correction of a security flaw or vulnerability, where such activity is carried out in a controlled environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.[21]

The Office is interested in commenters' views on whether this language would be appropriate for adoption as a permanent exemption, or whether there are specific changes or additional provisions that Congress may wish to consider.

b. The exemption for security testing under section 1201(j) is limited to activities undertaken "with the authorization of the owner or operator of [the] computer, computer system, or computer network."[22] In the 2015 rulemaking, the Register noted that in some cases "it may be difficult to identify the relevant owner" for purposes of this requirement and that "it may not be feasible to obtain authorization even where there is an identifiable owner."[23] Echoing those concerns, one group of commenters argued that the authorization requirement should be eliminated, while another urged Congress to provide greater clarity in situations involving multiple owners. Please assess whether legislation may be appropriate in this area and discuss any specific legislative proposals that you believe should be considered.

c. Section 1201(j) provides a two-factor framework to determine whether a person qualifies for the security testing exemption.[24] In the 2015 rulemaking, the Register noted that these factors "would appear to be of uncertain application to at least some" security research activities.[25] Some commenters advocated the removal of one or both of these factors from the statute.[26] Please assess the advisability of such changes, or discuss any other specific legislative proposals you believe should be considered.

d. The exemption for encryption research in section 1201(g) is similarly limited to activities qualifying under a four-factor framework that includes making "a good faith effort to obtain authorization" before the circumvention.[27] In the 2015 rulemaking, the Register noted that meeting these requirements "may not always be feasible" for researchers.[28] Please assess whether legislation may be appropriate in this area and discuss any specific legislative proposals that you believe should be considered.

e. Section 1201(f) permits circumvention for the "sole purpose" of identifying and analyzing elements of computer programs necessary to achieve interoperability.[29] In the 2015 rulemaking, the Register noted that "section 1201(f)(1) is limited to circumvention solely for the identification and analysis of program elements necessary for interoperability, and does not address circumvention after that analysis has been performed."[30] Please assess whether legislation may be appropriate in this area and discuss any specific legislative proposals that you believe should be considered.

3. Anti-Trafficking Provisions

Commenters offered differing views regarding the role of the anti-trafficking provisions under sections 1201(a)(2) and 1201(b). User groups expressed

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Access Control Technologies, Final Rule, 68 FR 62011, 62013–16 (Oct. 31, 2003) ("2003 Final Rule"); Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 71 FR 68472, 68474–75, 68480 (Nov. 27, 2006) ("2006 Final Rule"); Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 75 FR 43825, 43833–34, 43839 (July 27, 2010) ("2010 Final Rule"); 2015 Final Rule, 80 FR at 65955, 65961.

[18] 17 U.S.C. 108(c); *see, e.g.,* 2000 Recommendation and Final Rule, 65 FR at 64565–66; Recommendation of the Register of Copyrights in RM 2002–4; Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 40 (Oct. 27, 2003); 2003 Final Rule, 68 FR at 62013–14; Recommendation of the Register of Copyrights in RM 2005–11; Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 36 & n.105 (Nov. 17, 2006); 2006 Final Rule, 71 FR at 68475.

[19] 17 U.S.C. 1201(f), (g), (j).

[20] Similarly, in the 2015 rulemaking, the Register noted that section 1201(j) "does not seem sufficiently robust in light of the perils of today's connected world." U.S. Copyright Office, Section 1201 Rulemaking: Sixth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention 3 (2015), *http://copyright.gov/1201/2015/registersrecommendation.pdf* ("2015 Recommendation").

[21] 2015 Recommendation at 319–20; 2015 Final Rule, 80 FR at 65956.

[22] 17 U.S.C. 1201(j)(1).

[23] 2015 Recommendation at 309.

[24] 17 U.S.C. 1201(j)(3).

[25] 2015 Recommendation at 309.

[26] The proposed Breaking Down Barriers to Innovation Act of 2015 would eliminate the two-factor framework, as well as the multifactor framework under section 1201(g)(3). H.R. 1883, 114th Cong. sec. 3(c)(3), 3(e)(2) (2015); S. 990, 114th Cong. sec. 3(c)(3), 3(e)(2) (2015).

[27] 17 U.S.C. 1201(g)(2)(C).

[28] 2015 Recommendation at 307.

[29] 17 U.S.C. 1201(f).

[30] 2015 Recommendation at 337 n.2295.

concern that, to the extent these provisions prohibit third parties from providing assistance to beneficiaries of exemptions, or prohibit the making and distribution of necessary tools, they undermine beneficiaries' practical ability to engage in the permitted conduct. Copyright owners, however, cautioned against amendment of the anti-trafficking provisions, arguing that because circumvention tools may be used for lawful and unlawful purposes alike, it would be impossible to ensure that tools manufactured and distributed pursuant to an exemption, once available in the marketplace, would be employed solely for authorized uses. The Office is interested in receiving additional views on this topic, and specifically invites comment on the following issues:

a. A few parties argued that section 1201 contains an implied right permitting a beneficiary of a statutory or administrative exemption to make a tool for his or her own use in engaging in the permitted circumvention. What are commenters' views regarding this interpretation of the statute? To what extent, if any, does the statutory prohibition on the "manufacture" of circumvention tools affect the analysis?[31] If such a right is not currently implied, or the question is uncertain, should Congress consider amending the statute to expressly permit such activity, while maintaining the prohibition against trafficking in such tools?

b. Some parties suggested that, in certain circumstances, third-party assistance may fall outside the scope of the anti-trafficking provisions and therefore may be permissible under current law. What are commenters' views regarding this interpretation of the statute? Are there forms of third-party assistance that do not qualify as a "service" within the meaning of sections 1201(a)(2) and 1201(b)(1)? If so, what considerations are relevant to this analysis?

Dated: September 21, 2016.

Maria A. Pallante,

Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2016–23167 Filed 9–26–16; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–068)]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA International Space Station (ISS) Advisory Committee. The purpose of the meeting is to review all aspects related to the safety and operational readiness of the ISS, and to assess the possibilities for using the ISS for future space exploration.

DATES: Monday, October 31, 2016, 2:00–3:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Glennan Conference Room (1Q39), 300 E Street SW., Washington, DC 20546. Note: 1Q39 is located on the first floor of NASA Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Finley, Office of International and Interagency Relations, (202) 358–5684, NASA Headquarters, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. This meeting is also accessible via teleconference. To participate telephonically, please contact Mr. Finley at (202) 358–5684 before 4:30 p.m., Local Time, October 26, 2016. You will need to provide your name, affiliation, and phone number.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with driver's licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I–9]. Non-compliant states/territories are: American Samoa, Minnesota, Missouri, and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Mr. Finley via email at *patrick.t.finley@nasa.gov* or by telephone at (202) 358–5684. U.S. citizens and Permanent Residents (Green Card holders) can provide full name and citizenship status 3 working days prior to the meeting to Mr. Finley. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–23242 Filed 9–26–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 81 FR 36962, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission (including comments) may be found at: *http://www.reginfo.gov/public/do/PRAMain*. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to

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[31] *See* 17 U.S.C. 1201(a)(2), (b)(1).

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comments: As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through publication of a 60-Day Notice in the **Federal Register** on April 17, 2013, at 78 FR 22917. We received one comment, to which we here respond.

Commenter: The Council on Governmental Relations (COGR) raised a general concern that additional reporting requirements presented added burden on their members.

Response: The reporting requirements and estimates on the hourly burden were discussed with the management of the Nanoscale Science and Engineering Centers. Center Directors and their management staff, the primary respondents to this data collection, were consulted for feedback on the availability of data, frequency of data collection, the clarity of instructions, and the data elements. Their feedback confirmed that the frequency of data collection was appropriate and that they did not provide these data in other data collections.

After consideration of this comment, we are moving forward with our submission to OMB.

Title of Collection: Grantee Reporting Requirements for Nanoscale Science and Engineering Centers (NSECs).

OMB Approval Number: 3145–0229.

Type of Request: Intent to renew, without change, an information collection.

Abstract: The Nanoscale Science and Engineering Centers (NSECs) Program supports innovation in the integrative conduct of research, education, and knowledge transfer. NSECs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. NSECs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

NSECs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. NSECs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

NSECs are required to submit annual reports on progress and plans, which are used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, NSECs are required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in *Research.gov* and an external technical assistance contractor that collects programmatic data electronically. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the NSEC effort. Such reporting requirements are included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report addresses the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management, and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

NSECs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports, but are retrospective.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 200 hours per center for thirteen centers for a total of 2,600 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the thirteen NSECs.

Dated: September 22, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–23290 Filed 9–26–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 27, 2016. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National

Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2017–011

1. *Applicant:* Brandon Harvey, Director Expedition Operations, Polar Latitudes, Inc., 2206 Jericho Street, White River Junction, VT 05001.

Activity for Which Permit Is Requested: Waste Permit

For Coastal Camping: The applicant seeks permission for no more than 30 campers and two expedition staff to camp overnight at select locations for a maximum of 10 hours ashore. Camping would be away from vegetated sites and >150m from wildlife concentrations or lakes, protected areas, historical sites, and scientific stations. Tents would be pitched on snow, ice, or bare smooth rock, at least 15m from the high water line. No food, other than emergency rations, would be brought onshore and all wastes, including human waste, would be collected and returned to the ship for proper disposal. The applicant is seeking a Waste Permit to cover any accidental releases that may result from camping.

For Unmanned Aerial Vehicle (UAV) Commercial Filming: The applicant wishes to fly small, battery operated, remotely controlled copters equipped with a camera to take scenic photos and film of the Antarctic. The UAVs would not be flown over concentrations of birds or mammals or over Antarctic Specially Protected Areas. The UAVs would only be flown by operators with extensive experience (>20 hours), who are pre-approved by the Expedition Leader. Several measures would be taken to prevent against loss of the UAV including painting them a highly visible color; only flying when the wind is less than 25 knots; flying for only 15 minutes at a time to preserve battery life; having prop guards on propeller tips, a flotation device if operated over water, and a "go home" feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and UAV does not exceed an operational range of 500 meters. The applicant is seeking a Waste Permit to cover any accidental releases that may result from flying a UAV.

Location

Camping: Possible locations include Damoy Point/Dorian Bay, Danco Island, Rongé Island, the Errera Channel, Paradise Bay (including Almirante Brown/Base Brown or Skontorp Cove), the Argentine Islands, Andvord Bay, Pleneau Island, Hovgaard Island, Orne Harbour, Leith Cove, Prospect Point and Portal Point.

UAV filming: Western Antarctic Peninsula region.

Dates

October 31, 2016 to March 13, 2017.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–23246 Filed 9–26–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260, & 50–296–LA; ASLBP No. 16–948–03–LA–BD01]

Establishment of Atomic Safety and Licensing Board; Tennessee Valley Authority

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Tennessee Valley Authority (Browns Ferry Nuclear Plant Units 1, 2, and 3).

This proceeding involves a challenge to an application by Tennessee Valley Authority for an amendment to the operating licenses for the Browns Ferry Nuclear Plant Units 1, 2, and 3, located in Athens, Alabama. In response to a **Federal Register** Notice, "Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information," published on July 5, 2016, *see* 81 FR 43661–43669, the Bellefonte Efficiency & Sustainability Team/Mothers Against Tennessee River Radiation (BEST/MATRR) filed a Petition to Intervene and Request for Hearing on September 9, 2016.

The Board is comprised of the following Administrative Judges:

Paul S. Ryerson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001
Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001
Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland, September 20, 2016.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2016–23104 Filed 9–26–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0202]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from August 30, 2016, to September 12, 2016. The last biweekly notice was published on September 13, 2016.

DATES: Comments must be filed by October 27, 2016. A request for a hearing must be filed by November 28, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0202. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2016–0202, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0202.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0202 facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to issuance of the amendment to the subject facility operating license or combined license. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the

Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by November 28, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/*

adjudicatory-sub.html. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Energy Northwest, Docket No. 50–397, Columbia Generating Station (Columbia), Benton County, Washington

Date of amendment request: July 14, 2016. A publicly-available version is in ADAMS under Accession No. ML16196A419.

Description of amendment request: The amendment would change Technical Specification (TS) 5.5.6, "Inservice Testing [IST] Program," to remove requirements duplicated in American Society of Mechanical Engineers (ASME) Code for Operations and Maintenance of Nuclear Power Plants (OM Code), Case OMN–20, "Inservice Test Frequency." This change, thereby, will then adopt Technical Specification Task Force (TSTF) TSTF–545, Revision 3, "TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, "Administrative Controls," Section 5.5, "Programs and Manuals," by eliminating the "Inservice Testing Program" specification. Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM Code, as clarified by Code Case OMN–20, "Inservice Test Frequency," which has been approved for use at Columbia. The remaining requirements in the Section 5.5 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, "Inservice Testing Program," is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Energy Northwest, Docket No. 50–397, Columbia Generating Station (Columbia), Benton County, Washington

Date of amendment request: July 28, 2016. A publicly-available version is in ADAMS under Accession No. ML16210A528.

Description of amendment request: The amendment would revise the current Columbia Emergency Plan Emergency Action Level scheme to one based on Nuclear Energy Institute (NEI) guidance established in NEI 99–01, "Development of Emergency Action Levels for Non-Passive Reactors," Revision 6, which has been endorsed by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment affects the Columbia Generating Station (Columbia) Emergency Plan (EP) and associated Emergency Action Levels (EALs); it does not alter the Operating License or the Technical Specifications. The proposed amendment does not change the design function of any system, structure, or component and does not change the way the plant is maintained or operated. The proposed amendment does not affect any accident mitigating feature or increase the likelihood of malfunction for plant structures, systems, and components.

The proposed amendment will not change any of the analyses associated with the Columbia Final Safety Analysis Report Chapter 15 accidents because plant operation, structures, systems, components, accident initiators, and accident mitigation functions remain unchanged.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment affects the Columbia EP and associated EALs; it does not change the design function of any system, structure, or component and does not change the way the plant is operated or maintained. The proposed amendment does not create a credible failure mechanism, malfunction, or accident initiator not already considered in the design and licensing basis.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with the ability of the fission product barriers (*i.e.*, fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed amendment does not impact operation of the plant and no accident analyses are affected by the proposed amendment. The proposed amendment does not affect the Technical Specifications or the method of operating the plant. Additionally, the proposed amendment will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by this amendment. The proposed amendment will not result in plant operation in a configuration outside the design basis. The proposed amendment does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3 (IP3), Westchester County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (FitzPatrick), Oswego County, New York

Date of amendment request: August 16, 2016. A publicly-available version is in ADAMS under Accession No. ML16230A308.

Description of amendment request: The amendment would transfer the beneficial interest in the Power Authority of the State of New York (PASNY) Master Decommissioning

Trust (Master Trust), including all rights and obligations thereunder, held by PASNY for IP3 and FitzPatrick to Entergy Nuclear Operations, Inc. (ENO). ENO also requests the NRC's consent to amendments to the Master Decommissioning Trust Agreement dated July 25, 1990, as amended (Master Trust Agreement), governing the Master Trust to facilitate this transfer. Finally, ENO seeks approval of license amendments to modify the existing trust-related license conditions to reflect the proposed transfer of the Master Trust to ENO and to delete other conditions so as to apply the requirements of 10 CFR 50.75(h)(1). ENO and Exelon Generation Company, LLC. (Exelon), jointly filed an application for a direct license transfer of FitzPatrick to Exelon on August 18, 2016. A separate **Federal Register** notice details the NRC's consideration of approval for the FitzPatrick license transfer.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> Response: No.
>
> The requested changes delete certain license conditions pertaining to the decommissioning trust agreements currently in sections 2.Q to 2.X of the IP3 Operating License and sections 2.H to 2.O of the FitzPatrick Operating License. In addition, conforming changes to 2.W and 2.X of the IP3 Operating License and 2.P and 2.Q of the FitzPatrick Operating License are necessary [to] reflect the transfer of the Master Trust from PASNY to ENO.
>
> The requested changes are consistent with the types of license amendments permitted in 10 CFR 50.75(h)(5).
>
> The regulations of 10 CFR 50.75(h)(4) state that "Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves 'no significant hazards consideration.'"
>
> In addition the requested changes seek changes to the Master Trust agreement only to the extent that they replace PASNY, a non-licensee, with ENO, a licensee. No other changes to the Master Trust agreement are contemplated.
>
> This request involves changes that are administrative in nature. No actual plant equipment or accident analyses will be affected by the proposed changes.
>
> Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?
>
> Response: No.
>
> This request involves administrative changes to licenses that will be consistent with the NRC's regulations at 10 CFR 50.75(h) and to change the name of the entity responsible under the Master Trust for decommissioning from a non-licensee to a licensee.
>
> No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created.
>
> Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.
>
> 3. Do the proposed amendments involve a significant reduction in a margin of safety?
>
> Response: No.
>
> The request involves administrative changes to the licenses that will be consistent with the NRC's regulations at 10 CFR 50.75(h) and to change the name of the entity responsible under the Master Trust for decommissioning from a non-licensee to a licensee.
>
> Margin of safety is associated with confidence in the ability of the fission product barriers to limit the level of radiation doses to the public. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation.
>
> Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York, 10601.

NRC Branch Chief: Travis L. Tate.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: August 22, 2016, as supplemented by letter dated September 8, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML16235A195 and ML16252A351, respectively.

Description of amendment request: The proposed amendment would replace existing license condition 2.C.(4) with a new license condition to state that technical specification (TS) surveillance requirement (SR) 3.1.4.3 is not required for control rod drive 13 (CRD–13) during cycle 25 until the next entry into Mode 3. In addition, the condition would state that CRD–13 seal leakage shall be repaired prior to entering Mode 2, following the next Mode 3 entry, and that the reactor shall be shut down if CRD–13 seal leakage exceeds two gallons per minute. The proposed amendment also requests replacement of the obsolete note in TS SR 3.1.4.3 with a note to clarify that TS SR 3.1.4.3 is not required to be performed or met for CRD–13 during cycle 25 provided CRD–13 is administratively declared immovable, but trippable, and Condition D is entered for CRD–13.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> Response: No.
>
> The proposed license amendment replaces an obsolete license condition concerning CRD–22 testing that applied only to operating cycle 21 with a new license condition to forgo the remaining two required surveillance tests of CRD–13 from the PNP TS surveillance requirement for partial movement every 92 days during cycle 25. Since CRD–13 remains trippable, the proposed license condition does not affect or create any accident initiators or precursors. As such, the proposed license condition does not increase the probability of an accident.
>
> The proposed license amendment does not increase the consequences of an accident. The ability to move a full-length control rod by its drive mechanism is not an initial assumption used in the safety analyses. The safety analyses assume full-length control rod insertion, except the most reactive rod, upon reactor trip. The surveillance requirement performed during the last refueling outage verified control rod drop times are within accident analysis assumptions. ENO [Entergy Nuclear Operations] has determined that CRD seal leakage does not increase the likelihood of an untrippable control rod. The assumptions of the safety analyses will be maintained, and the consequences of an accident will not be increased.
>
> Therefore, operation of the facility in accordance with the proposed license condition would not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment does not involve a physical alteration of any structure, system or component (SSC) or change the way any SSC is operated. The proposed license condition does not involve operation of any required SSCs in a manner or configuration differently from those previously recognized or evaluated. No new failure mechanisms would be introduced by the requested SR interval extension.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed license amendment does not affect trippability of the control rod. It will have the same capability to mitigate an accident as it had prior to the proposed license condition.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Senior Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey; and Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1 (NMP1), Oswego County, New York

Date of amendment request: August 1, 2016. A publicly-available version is in ADAMS under Accession No. ML16215A128.

Description of amendment request: The amendments would revise OCNGS's Technical Specification (TS) Section 2.1, "Safety Limit—Fuel Cladding Integrity," and NMP1's TS Section 2.1.1, "Fuel Cladding Integrity," to reduce the steam dome pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC edits in [brackets]:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the OCNGS TS for the reactor steam dome pressure in Reactor Core Safety Limits 2.1.A and 2.1.B does not alter the use of the analytical methods used to determine the safety limits that have been previously reviewed and approved by the NRC. Additionally, the proposed change to NMP1 for the reactor steam dome pressure in Reactor Core Safety Limits 2.1.1.a and 2.1.1.b does not alter the use of the analytical methods used to determine the safety limits that have been previously reviewed and approved by the NRC. The proposed change is in accordance with an NRC approved critical power correlation methodology, and as such, maintains required safety margins. The proposed change does not adversely affect accident initiators or precursors, nor does it alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained.

The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not require any physical change to any plant SSCs nor does it require any change in systems or plant operations. The proposed change is consistent with the safety analysis assumptions and resultant consequences.

Lowering the value of reactor steam dome pressure in the TS has no physical effect on plant equipment and therefore, no impact on the course of plant transients. The change is an analytical exercise to demonstrate the applicability of correlations and methodologies. There are no known operational or safety benefits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed reduction in the reactor dome pressure safety limit from 800 psia [pounds per square inch absolute] to 700 psia is a change based upon previously approved documents and does not involve changes to the plant hardware or its operating characteristics. As a result, no new failure modes are being introduced. There are no hardware changes nor are there any changes in the method by which any plant systems perform a safety function. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change.

The proposed change does not introduce any new accident precursors, nor does it involve any physical plant alterations or changes in the methods governing normal plant operation. Also, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter assumptions made in the safety analysis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components, and through the parameters for safe operation and setpoints for the actuation of equipment relied upon to respond to transients and design basis accidents. Evaluation of the 10 CFR part 21 condition by GE [General Electric] determined that since the MCPR [minimum critical power ratio] improves during the PRFO [pressure regulator failure-maximum demand (open)] transient, there is no decrease in the safety margin and therefore there is not a threat to fuel cladding integrity. The proposed change in reactor dome pressure supports the current safety margin, which protects the fuel cladding integrity during a depressurization transient, but does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety. The change does not alter the behavior of plant equipment, which remains unchanged.

The proposed change to Reactor Core Safety Limits 2.1.A and 2.1.B is consistent with and within the capabilities of the applicable NRC approved critical power correlation for the fuel designs in use at OCNGS. Additionally, the proposed change to Reactor Core Safety Limits 2.1.1.a and 2.1.1.b is consistent with and within the capabilities of the NRC approved critical power correlation for the fuel designs in use at NMP1. No setpoints at which protective actions are initiated are altered by the proposed change. The proposed change does not alter the manner in which the safety limits are determined. This change is consistent with plant design and does not change the TS operability requirements; thus, previously evaluated accidents are not affected by this proposed change.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Shaun M. Anderson.

Indiana Michigan Power Company (I&M), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: July 21, 2016. A publicly-available version is in ADAMS under Accession No. ML16208A076.

Description of amendment request: The proposed changes are consistent with the NRC-approved Technical Specifications Task Force (TSTF) Traveler, TSTF–545, Revision 3, "TS [Technical Specification] Inservice Testing [IST] Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing." The proposed change would revise the TSs to eliminate the Section 5.5.6, "Inservice Testing Program." A new defined term, "INSERVICE TESTING PROGRAM," would be added to the TS Definitions section. TS SRs that currently refer to the Inservice Testing Program from Section 5.5.6 would be revised to refer to the new defined term, "INSERVICE TESTING PROGRAM."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, "Administrative Controls," Section 5.5, "Programs and Manuals," by eliminating the "Inservice Testing Program" specification. Most requirements in the IST Program are removed, as they are duplicative of requirements in the ASME [American Society of Mechanical Engineers] OM [Operation and Maintenance] Code, as clarified by Code Case OMN–20, "Inservice Test Frequency." The remaining requirements in the Section 5.5.6 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, "Inservice Testing Program," is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of IST is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of IST is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the TS provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David J. Wrona.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: August 11, 2016. A publicly-available version is in ADAMS under Accession No. ML16224B122.

Description of amendment request: The amendment request proposes changes to plant-specific Tier 2 information incorporated into the Updated Final Safety Analysis Report (UFSAR), and involves changes to combined license Appendix C (and corresponding plant-specific Tier 1 information). The proposed changes are to information identifying the frontal face area and screen surface area for the In-Containment Refueling Water Storage Tank (IRWST) screens, the location and dimensions of the protective plate located above the containment recirculation (CR) screens, and increasing the maximum Normal Residual Heat Removal System flowrate through the IRWST and CR screens. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with the NRC staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the location and dimensions of the protective plate continues to provide sufficient space surrounding the containment recirculation screens for debris to settle before reaching the screens as confirmed by an evaluation demonstrating that the protective plate continues to fulfill its design function of preventing debris from reaching the screens. In addition, the increase to the minimum IRWST screen size reinforces the ability of the screens to perform their design function with the increased [Residual Heat Removal System (RNS)] maximum flowrate proposed. The proposed changes do not adversely affect any accident initiating component, and thus the probabilities of the accidents previously evaluated are not affected. The affected equipment does not adversely affect the ability of equipment to contain radioactive material. Because the proposed change does not affect a release path or increase the expected dose rates, the potential radiological releases in the UFSAR accident analyses are unaffected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed activity to change the location and dimensions of the protective plate above the containment recirculation screens, to change the minimum IRWST screen size, and to increase the maximum RNS flowrate through the IRWST and CR screens does not alter the method in which safety functions are accomplished. The analyses demonstrate that the screens are able to perform their functions in a similar manner and perform adequately in response to an accident, and no new failure modes are introduced by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the design does not change any of the codes or standards to which the IRWST screens, containment recirculation screens, and containment recirculation screen protective plate are designed as documented in the UFSAR. The containment recirculation screen protective plate continues to prevent debris from reaching the CR screens, and the IRWST and CR screens maintain their ability to block debris while at the proposed increase in RNS maximum flowrate.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: August 23, 2016. A publicly-available version is in ADAMS under Accession No. ML16236A265.

Description of amendment request: The amendment request proposes changes to the Fire Pump Head and Diesel Fuel Day Tank. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Electric Company's AP1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The increase in head pressure by the proposed change to the fire protection system (FPS) motor-driven and diesel-driven fire pumps maintains compliance with National Fire Protection Association (NFPA) Standard NFPA–14, *Standard for the Installation of Standpipe, Private Hydrants, and Hose Systems,* 2000 Edition, requirements by providing adequate pressure in the standpipe and automatic sprinkler system to maintain the ability to fight and/or contain a postulated fire. The proposed change to the diesel-driven fire pump fuel day tank volume maintains the availability of the diesel-driven fire pump for service upon failure of the electric motor-driven fire pump or a loss of offsite power by providing a fuel day tank that is reserved exclusively for the diesel-driven pump and meets the minimum capacity requirements of NFPA 20, *Standard for the Installation of Stationary Pumps for Fire Protection,* 1999 Edition. These changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and [components (SSCs)] accident initiator or initiating sequence of events.

These changes have no adverse impact on the support, design, or operation of mechanical and fluid systems. The response of systems to postulated accident conditions is not adversely affected by the proposed changes. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. Consequently, the plant response to previously evaluated accidents is not impacted, nor does the proposed change create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes to the fire pump performance specifications and fire pump fuel day tank volume do not affect any safety-related equipment, nor do they add any new interface to safety-related SSCs. No system or design function or equipment qualification is affected by this change. The changes do not introduce a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain compliance with the applicable Codes and Standards, thereby maintaining the margin of safety associated with these SSCs. The proposed changes do not alter any applicable design codes, code compliance, design function, or safety analysis. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus the margin of safety is not reduced.

Because no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by these changes, no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: July 28, 2016. A publicly-available version is in ADAMS under Accession No. ML16214A252.

Description of amendment request: The amendments would revise the technical specifications (TSs) at the Edwin I. Hatch Nuclear Plant, Units 1 and 2, to eliminate the "Inservice Testing Program" from TS 5.5, "Programs and Manuals," and add a new defined term, "INSERVICE TESTING PROGRAM," to TS 1.1, "Definitions." This request is submitted in accordance with Technical

Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, “TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing.”

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, “Administrative Controls,” Section 5.5, “Programs and Manuals,” by eliminating the “Inservice Testing Program” specification. Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM [American Society of Mechanical Engineers Operation and Maintenance] Code, as clarified by Code Case OMN–20, “Inservice Test Frequency.” The remaining requirements in the Section 5.5 IST [Inservice Testing] Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, “INSERVICE TESTING PROGRAM,” is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension.

The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: July 28, 2016. A publicly-available version is in ADAMS under Accession No. ML16214A252.

Description of amendment request: The amendments would revise the technical specifications (TSs) at the Joseph M. Farley Nuclear Plant, Units 1 and 2, to eliminate the “Inservice Testing Program” from TS 5.5, “Programs and Manuals,” and add a new defined term, “INSERVICE TESTING PROGRAM,” to TS 1.1, “Definitions.” This request is submitted in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, “TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing.”

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, “Administrative Controls,” Section 5.5, “Programs and Manuals,” by eliminating the “Inservice Testing Program” specification. Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM Code [American Society of Mechanical Engineers Operation and Maintenance Code], as clarified by Code Case OMN–20, “Inservice Test Frequency.” The remaining requirements in the Section 5.5 IST [Inservice Testing] Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, “INSERVICE TESTING PROGRAM,” is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension.

The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed in service tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Iverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: July 28, 2016. A publicly-available version is in ADAMS under Accession No. ML16214A252.

Description of amendment request: The amendments would revise the technical specifications (TSs) at the Vogtle Electric Generating Plant, Units 1 and 2, to eliminate the "Inservice Testing Program" from the TS 5.5, "Programs and Manuals," section and to add a new defined term, "INSERVICE TESTING PROGRAM," to the TS 1.1, "Definitions," section. This request is submitted in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, "TS Inservice Testing Program Removal & Clarify SR Usage Rule Application to Section 5.5 Testing."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, "Administrative Controls," Section 5.5, "Programs and Manuals," by eliminating the "Inservice Testing Program" specification. Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM [American Society of Mechanical Engineers Operation and Maintenance] Code, as clarified by Code Case OMN–20, "Inservice Test Frequency." The remaining requirements in the Section 5.5 IST [Inservice Testing] Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, "INSERVICE TESTING PROGRAM," is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension.

The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed in service tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: October 9, 2015, as supplemented by letter dated May 12, 2016.

Brief description of amendments: The amendments approve a revision to the emergency action levels from a scheme based on Nuclear Energy Institute (NEI) 99–01, Revision 5, "Methodology for Development of Emergency Action Levels," to a scheme provided in the subsequent Revision 6 of NEI 99–01.

Date of issuance: September 8, 2016.

Effective date: As of the date of issuance and shall be implemented within 365 days from the date of issuance.

Amendment Nos.: Unit 1—198; Unit 2—198; Unit 3—198. A publicly-available version is in ADAMS under Accession No. ML16180A109; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Operating Licenses.

Date of initial notice in ***Federal Register***: December 8, 2015 (80 FR 76318). The supplemental letter dated May 12, 2016, provided additional information that clarified the application, incorporated recent emergency preparedness frequently asked questions, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: September 24, 2013, as supplemented by letters dated February 9, March 11, April 13, July 6, and August 13, 2015; and February 24 and April 22, 2016.

Brief description of amendments: These amendments modify the operating licenses and technical specifications (TSs) to incorporate a new fire protection licensing basis in accordance with 10 CFR 50.48(c). The amendments authorize the transition of the licensee's fire protection program to a risk-informed, performance-based program based on the 2001 Edition of National Fire Protection Association Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants."

Date of issuance: August 30, 2016.

Effective date: As of the date of issuance and shall be implemented in accordance with the schedule contained in the revised paragraph 2.E. and page 12 of Appendix C, Additional Conditions to the Renewed Facility Operating Licenses.

Amendment Nos.: 318 and 296. A publicly-available version is in ADAMS under Accession No. ML16175A359; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register***: August 5, 2014 (79 FR 45488). The supplemental letters dated February 9, March 11, April 13, July 6, and August 13, 2015; and February 24 and April 22, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Date of amendment request: October 8, 2015, as supplemented by letter dated April 7, 2016.

Brief description of amendment: The amendments modified the technical specifications (TSs) to allow for brief, inadvertent simultaneous opening of redundant secondary containment personnel access doors during brief entry and exit conditions.

Date of issuance: August 31, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 223 (Unit 1) and 157 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16197A486; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–63 and NPF–69: Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register***: January 5, 2016 (81 FR 262). The supplemental letter dated April 7, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 2016.

No significant hazards consideration comments received: No.

Florida Power & Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 31, 2015, as supplemented by letters dated April 20 and July 15, 2016.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) consistent with Technical Specification Task Force Traveler 422, Revision 2, "Change in Technical Specifications End States (CE NPSD–1186)."

Date of issuance: August 30, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 234 and 184. A publicly-available version is in ADAMS under Accession No. ML16210A374; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register***: November 24, 2015 (80 FR 73237). The supplemental letters dated April 20 and July 15, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2016.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: May 18, 2016.

Brief description of amendment: The amendment revised the DAEC technical specifications (TSs) Section 2.1.1, "Reactor Core [Safety Limits]," to change the Safety Limit Minimum Critical Power Ratio (SLMCPR) for two recirculation loop operation and for single recirculation loop operation. The changes reflected the cycle-specific analysis. The amendment also removed an outdated historical footnote from TS Table 3.3.5.1–1.

Date of issuance: September 12, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 297. A publicly-available version is in ADAMS under Accession No. ML16211A514; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: July 5, 2016 (81 FR 43665).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2016.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 18, 2015, as supplemented by letters dated January 29, April 14, and May 31, 2016.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.5.12, "Primary Containment Leakage Rate Testing Program," to state that the program shall be in accordance with Nuclear Energy Institute (NEI) 94–01, Revision 3–A, "Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, appendix J."

Date of issuance: August 30, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 296. A publicly-available version is in ADAMS under Accession No. ML16210A008; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: October 27, 2015 (80 FR 65814). The supplemental letters dated January 29, April 14, and May 31, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 2016.

No significant hazards consideration comments received: No.

NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 26, 2013, as supplemented by letters dated September 16, 2013, July 29, August 28, September 25, November 14, December 19, 2014; January 16, May 12, August 26, 2015; and February 22, April 7, and May 3, 2016.

Brief description of amendments: The amendments authorized the transition of the Point Beach fire protection program to a risk-informed, performance-based program based on National Fire Protection Association Standard 805 (NFPA 805), "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants," 2001 Edition, in accordance with 10 CFR 50.48(c).

Date of issuance: September 8, 2016.

Effective date: As of the date of issuance and shall be implemented as described in the Transition License Conditions.

Amendment Nos.: 256 and 260. A publicly-available version is in ADAMS under Accession No. ML16196A093;

documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: July 8, 2014 (79 FR 28580). The supplemental letters dated September 16, 2013, July 29, August 28, September 25, November 14, December 19, 2014; January 16, May 12, August 26, 2015; and February 22, April 7, and May 3, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 2016.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: December 15, 2015, as supplemented by letters dated May 4, 2016, and June 1, 2016.

Brief description of amendment: The amendment revised the Technical Specifications to allow implementation of the F* (F-star) alternate repair criterion for steam generator tubes.

Date of issuance: September 6, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 2. A publicly-available version is in ADAMS under Accession No. ML16203A365; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–96: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: February 16, 2016 (81 FR 7844). The supplemental letters dated May 4, 2016, and June 1, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of September 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–23097 Filed 9–26–16; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

U.S.-EU Communities of Research on Environmental, Health, and Safety Issues Related to Nanomaterials; Notice of Public Meetings

ACTION: Notice of public meeting.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC) and in collaboration with the European Commission, will host meetings for the U.S.-EU Communities of Research (CORs) on the topic of environmental, health, and safety issues related to nanomaterials (nanoEHS) between the publication date of this Notice and September 30, 2017. The CORs are a platform for scientists to develop a shared repertoire of protocols and methods to overcome research gaps and barriers. The co-chairs for each COR will convene meetings and set meeting agendas with administrative support from the European Commission and the NNCO.

DATES: The CORs will hold multiple webinars and/or conference calls between the publication date of this Notice and September 30, 2017.

ADDRESSES: Teleconferences and web meetings for the CORs will take place periodically between the publication date of this Notice and September 30, 2017. Meeting dates, call-in information, and other COR updates will be posted on the Community of Research page at *http://us-eu.org/.*

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Stacey Standridge at National Nanotechnology Coordination Office, by telephone (703) 292–8103 or email *sstandridge@nnco.nano.gov.* Additional information about the CORs and their upcoming meetings is posted at *http://us-eu.org/.*

SUPPLEMENTARY INFORMATION: There are seven Communities of Research addressing complementary themes:

- Characterization
- Databases and Computational Modeling for NanoEHS
- Exposure through Product Life
- Ecotoxicity
- Human Toxicity
- Risk Assessment
- Risk Management and Control

The CORs directly address Objectives 4.1.4 (“Participate in international efforts, particularly those aimed at generating [nanoEHS] best practices”) and 4.2.3 (“Participate in coordinated international efforts focused on sharing data, guidance, and best practices for environmental and human risk assessment and management”) of the 2014 National Nanotechnology Initiative Strategic Plan, available at *http://www.nano.gov/node/1113.* However, the CORs are not envisioned to provide any government agency with advice or recommendations.

Registration: Individuals wishing to participate in any of the CORs should send the participant's name, affiliation, and country of residence to *sstandridge@nnco.nano.gov* or mail the information to Stacey Standridge, 4201 Wilson Blvd., Stafford II, Suite 405, Arlington, VA 22230. NNCO will collect email addresses from registrants to ensure that they are added to the COR listserv(s) to receive meeting information and other updates relevant to the COR scope from other COR members. Email addresses are submitted on a completely voluntary basis.

Meeting Accommodations: Individuals requiring special accommodation to access these public meetings should contact Stacey Standridge via telephone at (703) 292–8103 at least ten business days prior to each meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2016–23245 Filed 9–26–16; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78892; File No. SR–NYSEArca–2016–128]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

September 21, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 8, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Fee Schedule") to adopt a new pricing tier and a new execution fee. The Exchange proposes to implement the fee changes effective September 8, 2016.[4] The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a new pricing tier and a new execution fee. The Exchange proposes to implement the fee changes effective September 8, 2016.

Step Up Tier

The Exchange proposes a new pricing tier—Step Up Tier—for securities with a per share price of $1.00 or above.

As proposed, a new Step Up Tier credit of $0.0029 per share for providing liquidity in Tape A and Tape C Securities and $0.0028 per share for providing liquidity in Tape B Securities would apply to ETP Holders and Market Makers that, on a daily basis, measured monthly

(i) directly execute providing average daily volume ("ADV") on NYSE Arca in an amount that is an increase of no less than 0.15% of United States consolidated average daily volume ("US CADV")[5] in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in July 2016 ("Baseline Month"), and

(ii) set a new Best Bid or Offer ("BBO") on the Exchange with at least 40% of the ETP Holder's or Market Maker's providing ADV.

For example, an ETP Holder who has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 9.75 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.15% over the Baseline Month, for a total providing ADV of 24.75 million shares for the billing month. Further, of the 24.75 million shares, at least 9.9 million shares, or 40% of providing ADV of 24.75 million shares, would need to set a new BBO on the Exchange.

As an incentive for ETP Holders and Market Makers to direct their order flow to the Exchange, for the months of September 2016 and October 2016 only, the Exchange proposes adopting lower providing ADV criteria for ETP Holders and Market Makers to qualify for the proposed credit. For the billing month of September 2016 only, the proposed Step Up credit would apply to ETP Holders and Market Makers that, on a daily basis, measured monthly

(i) directly execute providing ADV on NYSE Arca in an amount that is an increase of no less than 0.045% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and

(ii) set a new BBO on the Exchange with at least 40% of the ETP Holder's or Market Maker's providing ADV.

For example, using the previous example, an ETP Holder who has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 2.925 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.045% over the Baseline Month, for a total providing ADV of 17.925 million shares for the billing month. Further, of the 17.925 million shares, at least 7.170 million shares, or 40% of providing ADV of 17.925 million shares, would need to set a new BBO on the Exchange.

For the billing month of October 2016 only, the proposed Step Up credit would be applicable to ETP Holders and Market Makers that, on a daily basis, measured monthly

(i) directly execute providing ADV on NYSE Arca in an amount that is an increase of no less than 0.09% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and

(ii) set a new BBO on the Exchange with at least 40% of the ETP Holder's and Market Maker's providing ADV.

Using the previous example again, an ETP Holder who has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 5.85 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.09% over the Baseline Month, for a total providing ADV of 20.850 million shares for the billing month. Further, of the 20.850 million shares, at least 8.340 million shares, or 40% of providing ADV of 20.850 million shares, would need to set a new BBO on the Exchange.

The Exchange notes that if an ETP Holder or Market Maker qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

The goal of the Step-Up Tier is to incentivize ETP Holders and Market Makers to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange notes that Step Up pricing tiers are not novel. Bats BZX Exchange ("BZX") currently provides Step-Up credits to participants on that exchange as an incentive to attract order flow to that exchange.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on August 31, 2016 (SR–NYSEArca–2016–125) and withdrew such filing on September 8, 2016.

[5] The Exchange proposes to use the same definition of US CADV for purposes of the proposed Step Up pricing tier. Specifically, US CADV would mean the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. *See* Fee Schedule, footnote 3.

Execution Fee

The Exchange proposes a new execution fee for participation in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction. The proposed fee would apply to securities with a per share price of $1.00 or above.

The Exchange's Fee Schedule currently includes fees applicable to executions that result from Market Orders, Auction-Only Orders, Market-On-Close Orders and Limit-On-Close Orders ("Auction Orders"). All other executions ("Non-Auction Orders") executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction are not currently charged a fee by the Exchange. The Exchange proposes to add a fee of $0.0006 per share that would apply to Non-Auction Orders executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction.

The Exchange notes the proposed fee is similar to the fee charged by the NASDAQ Stock Market LLC ("NASDAQ") for Continuous Book[7] orders executed on NASDAQ for the NASDAQ Opening Cross and the NASDAQ Closing Cross. NASDAQ currently charges a fee of $0.00085 per share for Continuous Book orders in both Opening and Closing Crosses.[8]

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated market participants will be subject to the same fees and credits and access to the Exchange's market is offered on fair and non-discriminatory terms.

The Exchange believes that the proposed Step-Up Tier is equitable because it is open to all ETP Holders and Market Makers on an equal basis and provides credits that are reasonably related to the value to an exchange's market quality associated with higher volumes. As stated above, the Exchange believes that the Step-Up Tier may incentivize market participants to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. Moreover, the addition of the Step-Up Tier would benefit market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. In addition, by offering a Step-Up Tier the Exchange believes more market participants may provide increased order flow and more market participants would be eligible to receive the proposed credits for their orders.

Further, the Exchange believes that the proposal is reasonable and would create an added incentive for ETP Holders and Market Makers to execute additional orders on the Exchange. The Exchange believes it is reasonable to require that at least 40% of the ETP Holders and Market Makers providing ADV set a new BBO on the Exchange as it would create an incentive for ETP Holders and Market Makers to improve displayed quotes on the Exchange, which would benefit all market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because providing incentives for orders that are executed on a registered national securities exchange would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes that adopting lower providing ADV criteria for September 2016 and October 2016 is reasonable because it may allow a greater number of ETP Holders and Market Makers to qualify for the proposed credits while also providing ETP Holders and Market Makers the opportunity to gradually increase their activity in order to qualify for the proposed credits. The Exchange believes that adopting lower providing ADV criteria for September 2016 and October 2016 is also equitable and not unfairly discriminatory because the lower criteria would apply uniformly to all ETP Holders and Market Makers during September 2016 and October 2016.

Volume-based rebates such as the ones currently in place on the Exchange, and as proposed herein, have been widely adopted in the cash equities markets and are equitable because they are open to all ETP Holders and Market Makers on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that the proposed execution fee for Non-Auction Orders participating in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. As noted above, Non-Auction Orders executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction are not currently charged a fee by the Exchange. The Exchange believes the proposed fee is reasonable because Non-Auction Orders receive a substantial benefit from executions within the various auctions on the Exchange. For example, the Exchange's closing auction is a recognized industry benchmark.[11] Moreover, the proposed fee is equitably allocated because the fee would apply to all market participants that benefit from such orders participating in the auctions. Similarly, the proposed fee is not unfairly discriminatory because it would apply to all Non-Auction Orders executed in the auctions resulting in a benefit to market quality that such orders would provide. The Exchange believes the proposal to adopt a fee for Non-Auction Orders executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction is reasonable, equitably allocated and not unfairly discriminatory because the proposed fee would apply to all market participants that participate in the auctions and receive an execution. Moreover, the Exchange does not believe that the proposed fee would negatively impact participation in the auctions. ETP Holders and Market Makers that do not want to be subject to the proposed fee would simply cancel their orders and thus can elect to not participate in the auctions.

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[6] *See* Step-Up Tiers and Cross-Asset Step-Up Tiers on the BZX Fee Schedule at *https://www.batstrading.com/support/fee_schedule/bzx/*.

[7] Continuous Book includes all quotes and extended hours orders eligible to participate in the NASDAQ Opening Cross and NASDAQ Closing Cross. *See* NASDAQ Crossing Network at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*.

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposal to add a new pricing tier would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders and Market Makers. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. Further, the proposed new fee for executions in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction is reflective of the value of executions that take place within the various auctions on the Exchange on a daily basis.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–128 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–128. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–128 and should be submitted on or before October 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23222 Filed 9–26–16; 8:45 am]

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[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78893; File No. SR–OCC–2016–803]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice of and No Objection to the Options Clearing Corporation's Proposal To Enter Into a New Credit Facility Agreement

September 21, 2016.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Payment, Clearing and Settlement Supervision Act")[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that, on August 29, 2016, The Options Clearing Corporation ("OCC") filed an advance notice (SR–OCC–2016–803) with the Securities and Exchange Commission ("Commission"). The advance notice is described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons, and to provide notice that the Commission does not object to the changes set forth in the advance notice and authorizes OCC to implement those changes earlier than 60 days after the filing of the advance notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is being filed in connection with a proposed change in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term for the purpose of meeting obligations arising out of the default or suspension of a clearing member, in anticipation of a potential default by a clearing member, or the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

A. Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received.

B. Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

This advance notice is being filed in connection with a proposed change in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term for the purpose of meeting obligations arising out of the default or suspension of a clearing member, in anticipation of a potential default by a clearing member, or the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations. OCC's existing credit facility ("Existing Facility") was implemented on October 5, 2015 through the execution of a Credit Agreement among OCC, Bank of America, N.A. ("BofA"), as administrative agent, and the lenders that are parties to the agreement from time to time. The Existing Facility provides short-term secured borrowings in an aggregate principal amount of $2 billion but may be increased to $3 billion if OCC so requests and sufficient commitments from lenders are received and accepted. To obtain a loan under the Existing Facility, OCC must pledge as collateral U.S. dollars or certain securities issued or guaranteed by the U.S. Government or the Government of Canada. Certain mandatory prepayments or deposits of additional collateral are required depending on changes in the collateral's market value. In connection with OCC's past implementation of the Existing Facility, OCC filed an advance notice with the Commission on September 9, 2015 [sic], and the Commission published a Notice of No-Objection on October 1, 2015.[3]

The Existing Facility is set to expire on October 3, 2016, and OCC is therefore currently negotiating the terms of a new credit facility ("New Facility") on substantially similar terms as the Existing Facility.

The terms and conditions applicable to the New Facility are set forth in the Summary of Terms and Conditions, which is not a public document.[4] OCC has separately submitted a request for confidential treatment to the Commission regarding the Summary of Terms and Conditions, which is included in this filing as Exhibit 3. The conditions regarding the availability of the New Facility, which OCC anticipates will be satisfied on or before October 3, 2016, include the execution and delivery of (i) a credit agreement between OCC and the administrative agent, collateral agent and various lenders under the New Facility, (ii) a pledge agreement between OCC and the administrative agent or collateral agent, and (iii) such other documents as may be required by the parties. The definitive documentation concerning the New Facility is expected to be consistent with the Summary of Terms and Conditions and substantially similar to that concerning the Existing Facility, although it may include certain changes as may be necessary regarding administrative and operational terms being finalized between the parties. Language will be added to the credit agreement in order to permit European Economic Area ("EEA")-based lenders under the New Facility to comply with new "bail-in" requirements under European law. Specifically, OCC would agree in the credit agreement that, liabilities of lenders that are classified as "EEA Financial Institutions" under the relevant law are subject to potential write-down or conversion into equity by EEA regulators.[5]

The New Facility involves a variety of customary fees payable by OCC, including: (1) An arrangement fee payable to the joint lead arrangers; (2) administrative and collateral agent fees payable to the administrative agent and collateral agent if the New Facility closes; (3) upfront commitment fees payable to the lenders based on the amount of their commitments; and (4) an ongoing quarterly commitment fee based on the unused amount of the New Facility.

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[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] *See* Securities Exchange Act Release No. 76062 (October 1, 2015), 80 FR 64028 (October 22, 2015) (SR–OCC–2015–803).

[4] The Summary of Terms and Conditions for the New Facility clarifies certain terms regarding mandatory prepayments or deposits of additional collateral, which, as described above, are also features of the Existing Facility.

[5] EU Directive 2014/59, often referred to as the Bank Resolution and Recovery Directive, contains wide-ranging recovery and resolution powers for EEA regulators to facilitate the rescue of a failing EEA financial institution. These powers include the ability for an EEA regulator to write-down and/or convert into equity a failing institution's liabilities. Article 55 of the Directive requires EEA financial institutions to include in certain documents, such as credit agreements, governed by the law of a non-EEA country an acknowledgment that obligations of the EEA financial institutions are subject to the exercise of write-down and conversion powers.

Anticipated Effect on and Management of Risk

Completing timely settlement is a key aspect of OCC's role as a clearing agency performing central counterparty services. Overall, the New Facility would continue to promote the reduction of risks to OCC, its clearing members and the options market in general because it would allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a clearing member, in anticipation of a potential default or suspension of clearing members or the insolvency of a bank or another securities or commodities clearing organization. The existence of the New Facility would therefore help OCC minimize losses in the event of such a default, suspension or insolvency, by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the New Facility would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. By drawing on the New Facility, OCC would also be able to avoid liquidating margin or clearing fund assets in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a clearing member, bank or other clearing organization. Because the New Facility generally preserves the same terms and conditions as the Existing Facility, OCC believes that the change would not otherwise affect or alter the management of risk at OCC. Moreover, and [sic] while the credit agreement for the New Facility would contain the "bail-in" acknowledgment discussed above, OCC has existing processes in place to monitor the financial health of lenders under the Existing and New Facilities, including European-based lenders under the New Facility. In the event that a lender were experiencing [sic] financial difficulties that triggered a bail-in risk, OCC could exercise its right to seek a replacement lender.

Consistency With the Payment, Clearing and Settlement Supervision Act

OCC believes that the New Facility is consistent with Section 805(b)(1) of the Payment Clearing and Settlement Supervision Act[6] because it promotes robust risk management by OCC of settlement and liquidity risk. The New Facility would promote robust risk management of these risks by providing OCC with timely access to a stable and reliable liquidity funding source to help it complete timely clearing and settlement.

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of the Payment, Clearing and Settlement Supervision Act,[7] OCC requests that the Commission notify OCC that it has no objection to the New Facility not later than Wednesday, September 28, 2016, which is three business days prior to the October 3, 2016 expiration date of the Existing Facility. OCC requests Commission action three business days in advance of the effective date in order to ensure that there is no period of time that OCC operates without this essential liquidity resource, given its importance to OCC's borrowing capacity in connection with its management of liquidity and settlement risk and timely completion of clearance and settlement.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the OCC with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies OCC in writing that it does not object to the proposed change and authorizes OCC to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2016–803 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2016–803. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site (*http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_803.pdf*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2016–803 and should be submitted on or before October 18, 2016.

V. Commission's Findings and Notice of No Objection

Although the Payment, Clearing and Settlement Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive.[8] The stated purpose is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities ("FMUs") and strengthening the liquidity of systemically important FMUs.[9] Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act[10] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the Supervisory Agency or the appropriate financial regulator. Section 805(b) of the Payment, Clearing and Settlement Supervision Act[11] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

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[6] 12 U.S.C. 5464(b)(1).

[7] 12 U.S.C. 5465(e)(1)(I).

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act[12] and the Act ("Clearing Agency Standards").[13] The Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[14] Therefore, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Payment, Clearing and Settlement Supervision Act.[15]

The Commission believes that the proposal in the advance notice is consistent with the Clearing Agency Standards, in particular, Rule 17Ad–22(d)(11) under the Act and Rule 17Ad–22(b)(3) under the Act.[16] Rule 17Ad–22(d)(11) under the Act[17] requires that registered clearing agencies "establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default." The Commission believes that the proposal is consistent with Rule 17Ad–22(d)(11) under the Act[18] because the New Facility will allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a clearing member, in anticipation of a potential default or suspension of clearing members or the insolvency of a bank or another securities or commodities clearing organization. Therefore, the New Facility should help OCC minimize losses in the event of such a default, suspension or insolvency, by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption.

Rule 17Ad–22(b)(3) under the Act[19] requires a central counterparty to "establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions . . . ." The Commission believes that the proposal is consistent with Rule 17Ad–22(b)(3) under the Act[20] because OCC's proposal to enter into the New Facility, thereby ensuring continued access to a committed bank syndicated credit facility, will help OCC maintain sufficient financial resources to withstand, at a minimum, a default by an clearing member family to which it has the largest exposure.

For these reasons, the Commission believes the proposal contained in the advance notice is consistent with the objectives and principles described in Section 805(b) of the Payment, Clearing and Settlement Supervision Act,[21] including that it reduces systemic risks and promote the safety and soundness of the broader financial system. As discussed above, the New Facility will continue to promote the reduction of risks to OCC, its clearing members, and the options market in general because it will allow OCC to obtain short-term funds to address liquidity demands, which should ensure clearance and settlement of transactions in options and other contracts without interruption. Given that OCC has been designated as a systemically important FMU, its ability to access financial resources to address short-term liquidity demands contributes to reducing systemic risks and supporting the stability of the broader financial system.

For these reasons, stated above, the Commission does not object to the advance notice.

VI. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Payment, Clearing and Settlement Supervision Act,[22] that the Commission *does not object* to the proposed change, and authorizes OCC to implement the change in the advance notice (SR–OCC–2016–803) as of the date of this notice.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–23223 Filed 9–26–16; 8:45 am]

BILLING CODE 8011–01–P

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[8] *See* 12 U.S.C. 5461(b).

[9] *Id.*

[10] 12 U.S.C. 5464(a)(2).

[11] 12 U.S.C. 5464(b).

[12] 12 U.S.C. 5464(a)(2).

[13] *See* Exchange Act Rule 17Ad–22. 17 CFR 240.17Ad–22. Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11).

[14] *Id.*

[15] 12 U.S.C. 5464(b).

[16] 17 CFR 240.17Ad–22(d)(11) and 17 CFR 240.17Ad–22(b)(3), respectively.

[17] 17 CFR 240.17Ad–22(d)(11).

[18] *Id.*

[19] 17 CFR 240.17Ad–22(b)(3).

[20] *Id.*

[21] 12 U.S.C. 5464(b).

[22] 12 U.S.C. 5465(e)(1)(I).

DEPARTMENT OF STATE

[Public Notice: 9727]

Notice of Receipt of Application for an Amended Presidential Permit for the Presidio-Ojinaga International Bridge on the U.S.-Mexico Border at Presidio, Texas and Ojinaga, Chihuahua, Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State ("State Department") hereby gives notice that, on September 7, 2016, it received an application from the Texas Department of Transportation (TXDOT) for an Amended Presidential Permit to construct a second bridge structure for southbound traffic on the U.S.-Mexico border at Presidio, Texas and Ojinaga, Chihuahua, Mexico. The State Department issued the original Presidential Permit to Presidio County on July 2, 1976, and an Amended Presidential Permit to TXDOT on May 4, 1982. The application may be found at: *http://www.state.gov/documents/organization/261891.pdf.*

The State Department's review of this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the State Department is circulating this application to relevant federal agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account views from these agencies and other stakeholders, whether issuing an Amended Presidential Permit to TXDOT to construct a second bridge structure for southbound traffic would serve the national interest. That determination process involves consideration of many factors, including foreign policy; environmental, cultural, and economic impacts; compliance with applicable law and regulations; and other issues.

Interested members of the public are invited to submit written comments regarding this application. The public comment period will end 30 days from the publication of this notice. Comments are not private. They will be posted on the site *http://www.regulations.gov.* The comments will not be edited to remove identifying or contact information, and the State Department cautions against including any information that one does not want publicly disclosed. The State Department requests that any party soliciting or aggregating comments received from other persons for submission to the State Department inform those persons that the State Department will not edit their comments to remove identifying or contact information, and that they should not include any information in their comments that they do not want publicly disclosed.

DATES: Comments must be submitted no later than October 27, 2016 at 11:59 p.m.

ADDRESSES: For reasons of efficiency, the State Department encourages the electronic submission of comments through the federal government's eRulemaking Portal (*http://www.regulations.gov*), enter Docket No. DOS–2016–0063, and follow the prompts to submit a comment. The State Department also will accept comments submitted in hard copy by mail and postmarked no later than October 27, 2016. Please note that standard mail delivery to the State Department can be delayed due to security screening. To submit comments by mail, use the following address: Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, via email at *WHA-BorderAffairs@state.gov;* by phone at 202–647–9894; or by mail at Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

Dated: September 21, 2016.

Colleen A. Hoey,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2016–23287 Filed 9–26–16; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Delegation of Authority No.: 403]

Delegation by the Secretary of State to the Assistant Secretary for South and Central Asian Affairs U.S. Participation in "Astana Expo 2017"

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a); the transfer provisions of the Foreign Affairs Reform and Restructuring Act of 1998, codified in 22 U.S.C. 6532; and pursuant to Executive Order 12048, as amended, I hereby delegate to the Assistant Secretary of State for South and Central Asian Affairs, to the extent authorized by law, the authority of the President under Section 102(a)(3) of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–286, to provide for U.S. participation in "Astana Expo 2017."

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, the Under Secretary for Political Affairs, and the Under Secretary for Public Diplomacy and Public Affairs may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority does not rescind, supersede, or in any way affect the validity of any other delegation of authority. This includes Delegation of Authority 234, dated October 1, 1999, which remains in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 29, 2016.

John F. Kerry,

Secretary of State.

DEPARTMENT OF STATE

Delegation of Authority No. ____

Delegation by the Secretary of State to the Assistant Secretary for South and Central Asian Affairs U.S. Participation in "Astana Expo 2017"

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. § 2651a); the transfer provisions of the Foreign Affairs Reform and Restructuring Act of 1998, codified in 22 U.S.C. § 6532; and pursuant to Executive Order 12048, as amended, I hereby delegate to the Assistant Secretary of State for South and Central Asian Affairs, to the extent authorized by law, the authority of the President under Section 102(a)(3) of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–286, to provide for U.S. participation in "Astana Expo 2017."

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, the Under Secretary for Political Affairs, and the Under Secretary for Public Diplomacy and Public Affairs may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority does not rescind, supersede, or in any way affect the validity of any other delegation of authority. This includes Delegation of Authority 234, dated October 1, 1999, which remains in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 29, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–23286 Filed 9–26–16; 8:45 am]

BILLING CODE 4710–46–P

DEPARTMENT OF STATE

[Public Notice: 9738]

Culturally Significant Objects Imported for Exhibition Determinations: "Kemang Wa Lehulere: In All My Wildest Dreams" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Kemang Wa Lehulere: In All My Wildest Dreams," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, Illinois, from on or about October 27, 2016, until on or about January 15, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 21, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–23457 Filed 9–26–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9737]

Notice of Receipt of Borrego Crossing Pipeline, LLC's Application for a Presidential Permit To Construct, Connect, Operate, and Maintain Pipeline Facilities on the Border of the United States and Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received an application from Borrego Crossing Pipeline, LLC ("Borrego") for a Presidential Permit authorizing the construction, connection, operation, and maintenance of pipeline facilities for the export of refined petroleum products. If the application is approved, the proposed pipeline facilities will transport refined products, including gasoline, ultra-low-sulfur diesel ("ULSD"), and jet fuel across the U.S.-Mexican border under the Rio Grande River. Minimum pipeline depth under the river bed will be 45 feet, and minimum pipeline depth under the river surface at the river banks will be 65 feet. The ultimate parent corporation of Borrego is Howard Midstream Energy Partners, LLC ("HEP"). Under E.O. 13337, the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other nongaseous fuels to or from a foreign country. The Department of State has the responsibility to determine whether issuance of a new Presidential Permit for construction, connection, operation, and maintenance of the proposed Borrego pipeline border facilities would serve the U.S. national interest. The Department will conduct an environmental review consistent with the National Environmental Policy Act of 1969. The Department will provide more information on the review process in a future **Federal Register** notice. Borrego's application is available at: *http://www.state.gov/e/enr/applicant/applicants/index.htm.*

FOR FURTHER INFORMATION CONTACT: Presidential Permit Coordinator, Energy Resources Bureau, (ENR/EGA/PAPD) United States Department of State, 2201 C St. NW., Suite 4422, Washington, DC 20520.

Richard Westerdale,

Director, Policy Analysis and Public Diplomacy, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2016–23288 Filed 9–26–16; 8:45 am]

BILLING CODE 4710–AE–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 763X)]

CSX Transportation, Inc.—Abandonment Exemption—in Logan County, W. Va.

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon an approximately 3.29-mile rail line on its Southern Region, Florence Division, Logan Subdivision, between milepost CLX 0.0 near Man and milepost CLX 3.29 near Garnette, in Logan County, W. Va. (the Line). The Line traverses United States Postal Service Zip Codes 25632 and 25635 and includes the Mann station at milepost CLX 0.0 (FSAC 82597/OPSL 69065) and the Garnette station at milepost CLX 3.0 (FSAC 82596/OPSL 65885).

CSXT has certified that: (1) No local freight traffic has moved over the Line for at least two years; (2) because the Line is not a through route, no overhead traffic has operated; and, therefore, none needs to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 27, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 7, 2016. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.[3]

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 30, 2016. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by September 27, 2017, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

Decided: September 22, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–23276 Filed 9–26–16; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f):

1. Carrizo (Marcellus), LLC, Pad ID: Henninger Pad, ABR–201110017.R1, Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: August 5, 2016.
2. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–17H, ABR–20110816.R1, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 5, 2016.
3. JKLM Energy, LLC, Pad ID: Headwaters 145, ABR–201608001, Ulysses Township, Potter County, Pa.; Consumptive Use of Up to 3.1250 mgd; Approval Date: August 9, 2016.
4. SWEPI LP, Pad ID: Youst 405, ABR–201106026.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 9, 2016.
5. SWEPI LP, Pad ID: Watkins 820, ABR–201106011.R1, Chatham Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 10, 2016.
6. Talisman Energy USA Inc., Pad ID: 05 235 Rogers H, ABR–201108051.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 10, 2016.
7. Chesapeake Appalachia, LLC, Pad ID: Dewolf, ABR–201608002, Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 11, 2016.
8. Chesapeake Appalachia, LLC, Pad ID: Cook, ABR–201111001.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 11, 2016.
9. Chesapeake Appalachia, LLC, Pad ID: Richard, ABR–201111010.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 11, 2016.
10. SWN Production Company, LLC, Pad ID: Clark Pad, ABR–201107043.R1, Orwell and Herrick Townships, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: August 11, 2016.
11. Talisman Energy USA Inc., Pad ID: 02 109 Frederick L, ABR–201108046.R1, Hamilton Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 12, 2016.
12. Talisman Energy USA Inc., Pad ID: 05 174 Carlsen C, ABR–201108052.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 12, 2016.
13. Chief Oil & Gas LLC, Pad ID: Myers Unit Drilling Pad #1, ABR–201201039.R1, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 18, 2016.
14. Chief Oil & Gas LLC, Pad ID: Crandall Drilling Pad #1, ABR–201202013.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 18, 2016.
15. Chesapeake Appalachia, LLC, Pad ID: Burkhart, ABR–201201028.R1, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
16. Chesapeake Appalachia, LLC, Pad ID: Warburton, ABR–201201033.R1, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
17. Chesapeake Appalachia, LLC, Pad ID: Makayla, ABR–201202008.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
18. Chesapeake Appalachia, LLC, Pad ID: Yadpad, ABR–201202020.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
19. Chief Oil & Gas LLC, Pad ID: Hurley Drilling Pad #1, ABR–201201040.R1, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 19, 2016.
20. Chief Oil & Gas LLC, Pad ID: Wright A

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[3] CSXT states that the Line may be suitable for other public purposes or trail use, but may be subject to reversionary interests.

Drilling Pad #1, ABR–201202004.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 19, 2016.

21. Chief Oil & Gas LLC, Pad ID: Castle A Drilling Pad #1, ABR–201202012.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 19, 2016.
22. Warren Marcellus, LLC, Pad ID: Macialek 1 Pad, ABR–201201010.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 19, 2016.
23. Anadarko E&P Onshore, LLC, Pad ID: Lycoming H&FC Pad C, ABR–201109003.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
24. Anadarko E&P Onshore, LLC, Pad ID: COP Tract 731 Pad C, ABR–201109016.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
25. Anadarko E&P Onshore, LLC, Pad ID: COP Tract 731 Pad D, ABR–201109017.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
26. Anadarko E&P Onshore, LLC, Pad ID: COP Tract 731 Pad E, ABR–201109021.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
27. Anadarko E&P Onshore, LLC, Pad ID: COP Tract 685 Pad B, ABR–201109022.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
28. Anadarko E&P Onshore, LLC, Pad ID: Lycoming H&FC Pad A, ABR–201109023.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
29. Anadarko E&P Onshore, LLC, Pad ID: Lycoming H&FC Pad D, ABR–201109024.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
30. Cabot Oil & Gas Corporation, Pad ID: HeitzenroderA P1, ABR–201109025.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: August 23, 2016.
31. Cabot Oil & Gas Corporation, Pad ID: BurtsL P1, ABR–201109026.R1, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: August 23, 2016.
32. Cabot Oil & Gas Corporation, Pad ID: FrystakC P1, ABR–201109027.R1, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: August 23, 2016.
33. Chesapeake Appalachia, LLC, Pad ID: Fox, ABR–201201007.R1, Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 23, 2016.
34. Chesapeake Appalachia, LLC, Pad ID: Ferraro, ABR–201202007.R1, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 23, 2016.
35. Carrizo (Marcellus), LLC, Pad ID: Karthaus CK–19, ABR–201112012.R1, Covington Township, Clearfield County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: August 29, 2016.
36. SWN Production Company, LLC, Pad ID: Bernstein Pad, ABR–201107052.R1, Clifford and Lenox Townships, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: August 31, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: September 22, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–23248 Filed 9–26–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2016–0021]

Commercial Activities on Interstate Rest Areas

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: The FHWA is interested in gathering public comments on how certain provisions of the current law surrounding commercial activities in rest areas should be interpreted and applied in consideration of advancements in technology and the interests of the States.

DATES: Comments must be received on or before December 27, 2016.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For questions about this notice contact Virgil Pridemore, Office of Real Estate Services, telephone at 202–366–2058, or via email at *Virgil.pridemore@dot.gov.* For legal questions, please contact Robert Black, FHWA Office of the Chief Counsel, telephone at 202–366–1359, or via email at *Robert.black@dot.gov.* Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve a copy of the notice through the Federal eRulemaking portal at *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded from Office of the Federal Register's Web site at *http://www.archives.gov/federal_register* and the Government Publishing Office's Web page at *http://www.gpoaccess.gov.*

Background

The FHWA provides financial aid (Federal-aid) to States for the construction, maintenance and operation of highway transportation facilities that are primarily on the National Highway System (NHS). The NHS consists of highways important to the Nation's economy, defense, and mobility, including the Interstate System.

States that receive Federal-aid for their NHS highway facilities or who wish to maintain eligibility to receive it must adhere to applicable Federal statutes and regulations. Section 111, of Title 23, United States Code, and 23 CFR 752.5 prohibit over the counter sales of merchandise in rest areas located on the Interstate. Allowable commercial activity in rest areas on the Interstate System includes:

- Installation of commercial advertising and media displays, if such advertising and displays are exhibited solely within any facility constructed in the rest area and are not legible from the main traveled way;
- sale of items designed to promote tourism in the State, limited to books, DVDs, and other media;
- sale of tickets for events or attractions in the State of a historical or tourism-related nature;

- distribution of travel-related information, including maps, travel booklets, and hotel coupon booklets;
- installation and operation of lottery machines; and
- installation and operation of vending machines which may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable and which are operated in accordance with the Randolph-Sheppard Act of 1936 found at 20 U.S.C. 107.

Recently, several State departments of transportation have raised questions about what constitutes a vending machine and consequently what can or should be allowed in Interstate rest areas. There is currently no definition of vending machine either in the statute at 23 U.S.C. 111 or the regulation at 23 CFR 752.5. The current regulation and law have remained substantially the same and have not defined the term "vending machine" for more than 30 years. At the time of publication of both the statute and final rule, vending machines were generally similar in that they accepted coins or paper currency, were operated by either a push button or a pull lever, and dispensed similar limited products. In the last several years, however, technology has evolved well beyond the types of machines that were available when the law was enacted and the final regulation was published. Vending machines can now accept electronic means of payment and can vend a continually evolving and broad range of products. Additionally, there is now technology that is similar to vending machines, but not in existence at the time the statute was enacted. For example, self-serve kiosks at which the customer scans the goods for sale and then pays by cash or electronic method and which requires no assistance from either the kiosk owner or employee have become readily available.

The FHWA is interested in gathering public comments on how certain provisions of the current law should be interpreted and applied in consideration of advancements in technology and the interests of the States. Specifically, FHWA is interested in comments concerning the definition of vending machines. The FHWA is also interested in public input concerning the provision of law that allows the sale of items designed to promote tourism in the State, currently limited to books, DVDs, and other media.

Specific questions to guide the input are as follows:

- Considering advances in technology, what defines a vending machine in today's world?
- What types of "media" should be considered as promoting tourism in the State?
- Should local agricultural products be considered media that promotes tourism?
- Are there other commercial activities that should be allowed consistent with Federal law?
- Is there a need for additional Federal guidance on commercial activities in Interstate rest areas, and if so, what should the guidance address?

Authority: 23 U.S.C. 111, 315, and 502(b); 23 CFR 752.5.

Issued on: September 19, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–23269 Filed 9–26–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2015–0063]

Nashville and Eastern Railroad Corporation's Positive Train Control Development Plan, Revision 2.5, Dated June 22, 2016

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides public notice of the Nashville and Eastern Railroad Corporation's (NERR) submission to FRA of its Positive Train Control Development Plan (PTCDP) Revision 2.5, dated June 22, 2016, and the availability of NERR's PTCDP for public comment. NERR requests that FRA approve its PTCDP, which describes NERR's Argenia Railway Technologies' Positive Train Control System (SafeNet System) as required under FRA regulations.

DATES: FRA must receive comments by October 27, 2016. FRA may consider comments received after that date if practicable.

ADDRESSES: All communications concerning this proceeding should identify Docket Number FRA–2015–0063 and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, Senior Scientific Technical Advisor, at (202) 493–1332 or *Mark.Hartong@dot.gov;* or Mr. David Blackmore, FRA Railroad Safety Program Manager for Applied Technology, at (312) 835–3903 or *David.Blackmore@dot.gov.*

SUPPLEMENTARY INFORMATION: In its PTCDP, NERR states the SafeNet System it is implementing is designed as a non-vital overlay PTC system under 49 CFR 236.1015(e)(1). The PTCDP describes NERR's SafeNet System implementation per 49 CFR 236.1013. During its review of the PTCDP, FRA will consider whether the SafeNet System satisfies the requirements for PTC systems under 49 CFR part 236, subpart I and whether the PTCDP makes a reasonable showing a system built to the stated requirements would achieve the level of safety mandated for such a system under 49 CFR 236.1015, *PTC Safety Plan content requirements and PTC System Certification.* If so, in addition to approving NERR's PTCDP, FRA, in its discretion, may issue a Type Approval for the SafeNet System. *See* 49 CFR 236.1013(b)–(d).

NERR's PTCDP is available for review online at *www.regulations.gov* (Docket No. FRA–2015–0063, document no. 0004 titled "Nashville and Eastern Railroad—Withdrawal") and in person at DOT's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties may comment on the PTCDP by submitting written comments or data. During its review of the PTCDP, FRA will consider any relevant comments or data submitted. However, FRA may elect not to respond to any particular comment and, under 49 CFR 236.1013(b), FRA maintains authority to approve or disapprove the PTCDP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding NERR's PTCDP because the circumstances do not appear to warrant a hearing. If an interested party desires an opportunity for oral comment, the party must notify FRA in writing before the end of the comment period and specify the basis for the request.

Privacy Act Notice

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which you can review at *www.dot.gov/privacy.* See *https://www.regulations.gov/privacyNotice* for the regulations.gov privacy notice.

Issued in Washington, DC, on September 16, 2016.

Robert C. Lauby,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2016–23262 Filed 9–26–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 12 Individuals, 25 Entities, and 1 Blocked Property Pursuant to Executive Order 13581, "Blocking Property of Transnational Criminal Organizations"

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 12 individuals and 25 entities whose property and interests in property are blocked, as well as 1 property that is blocked, pursuant to Executive Order 13581 of July 24, 2011, "Blocking Property of Transnational Criminal Organizations."

DATES: The designations by the Director of OFAC, pursuant to Executive Order 13581, of the 12 individuals, 25 entities, and 1 blocked property identified in this notice were effective on September 22, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On July 24, 2011, the President issued Executive Order 13581, "Blocking Property of Transnational Criminal Organizations" (the "Order"), pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). The Order was effective at 12:01 a.m. eastern daylight time on July 25, 2011. In the Order, the President declared a national emergency to deal with the threat that significant transnational criminal organizations pose to the national security, foreign policy, and economy of the United States.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to satisfy certain criteria set forth in the Order.

On September 22, 2016, the Director of OFAC, in consultation with the Attorney General and the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(C) of Section 1 of the Order, 12 individuals, 25 entities, and 1 blocked property whose property and interests in property are blocked pursuant to the Order.

The listings for these individuals, entities, and blocked property on OFAC's List of Specially Designated Nationals and Blocked Persons appear as follows:

Individual(s)

1. BOIVIN, Marie (a.k.a. BOIVIN, Marie Claude), 13 Beechgrove Gardens, Stittsville, Ottawa, Ontario K25 1W5, Canada; 2571 Carling Avenue, Ottawa, Ontario K2B 7H7, Canada; DOB 03 Jul 1975 (individual) [TCO] (Linked To: ACCU–RATE CORPORATION; Linked To: PACNET GROUP).

2. BOTTCHER, Monica Elizabete (a.k.a. BOTTCHER, Monica Elizabeth), 45 Knock Rushen, Castletown, Isle of Man IM9 1TQ, United Kingdom; DOB 26 Feb 1973 (individual) [TCO] (Linked To: PACNET BRAZIL; Linked To: PACNET GROUP).

3. DAVIS, Robert Paul (a.k.a. DAVIS, Paul; a.k.a. DAVIS, Paul Nadin; a.k.a. DAVIS, R. Paul Nadin; a.k.a. DAVIS, Robert; a.k.a. NADIN–DAVIS, Robert Paul), 45 Knock Rushen Scarlett, Castletown, Isle of Man IM9 1TQ, United Kingdom; 69 Buchanan Street, Glasgow, Scotland G1 3HL, United Kingdom; D11, Glyme Court, Oxford Office Village, Langford Lane, Kidlington, Oxon, England OX5 1LQ, United Kingdom; Avondale House, Queens Promenade, Douglas, Isle of Man IM2 4ND, United Kingdom; Parkshot House, 5 Kew Road, Richmond, Surrey TW9 2PR, United Kingdom; 1 Ros Na Greine, Balleycasey, Shannon, Ireland; 1 Ros Na Greinne, Balleycasey, Shannon, Co. Clare, Ireland; 70 Empress Court, Oxford, United Kingdom; 2571 Carling Avenue, Ottawa, Ontario K2B 7H7, Canada; DOB 19 Jan 1956; POB Fulwood, United Kingdom; Passport 460085575 (United Kingdom); alt. Passport VF275682 (Canada); alt. Passport BD103703 (Canada) (individual) [TCO] (Linked To: PACNET AIR; Linked To: PACNET EUROPE; Linked To: PACNET ZAR; Linked To: PACNET INDIA; Linked To: ACCU–RATE CORPORATION; Linked To: CHEXX ITALIA SRL; Linked To: CHEXX INC.; Linked To: COUNTING HOUSE SERVICES LTD.; Linked To: THE PAYMENTS FACTORY LTD.; Linked To: PACNET SERVICES LTD.; Linked To: PACNET SERVICES (IRELAND) LIMITED; Linked To: AEROPAY LIMITED; Linked To: MANX RARE BREEDS LTD.; Linked To: PACNET GROUP).

4. DAY, Rosanne Phyllis (a.k.a. DAY, Rosanne; a.k.a. DRONSFIELD, Rosanne Phyllis), 3928 West 22nd Avenue, Vancouver, British Columbia V65 1K1, Canada; 69 Buchanan Street, Glasgow, Scotland G1 3HL, United Kingdom; Parkshot House, 5 Kew Road, Richmond, Surrey TW9 2PR, United Kingdom; DOB 12 Mar 1968; nationality United Kingdom (individual) [TCO] (Linked To: DEEPCOVE LABS; Linked To: PACNET SERVICES LTD.; Linked To: PACNET ZAR; Linked To: CHEXX INC.; Linked To: PACNET EUROPE; Linked To: PACNET GROUP).

5. DRISCOLL, Mary Ann, Vancouver, British Columbia, Canada; DOB 01 Jun 1950 to 30 Jun 1950; nationality Canada (individual) [TCO] (Linked To: CHEXX

INC.; Linked To: INDIAN RIVER (UK) LTD.; Linked To: PACNET GROUP).

6. FERLOW, Ruth (a.k.a. FERLOW, Ruth Hilda Rose), D11 Glyme Court, Oxford Office Village, Langford Lane, Kidlington, Oxon OX5 1LQ, United Kingdom; 4910 Keith Road, Vancouver, BC V7W 2NI, Canada; 4th Floor, 595 Howe Street, Vancouver, BC V6C 2TF, Canada; DOB 05 Jan 1967; nationality Canada (individual) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: CHEXX INC.; Linked To: INDIAN RIVER (UK) LTD.; Linked To: PACNET GROUP).

7. FERRARI, Raffaella, Parkshot House, 5 Kew Road, Richmond, Surrey TW9 2PR, United Kingdom; Kingston upon Thames, United Kingdom; 69 Buchanan Street, Glasgow, Scotland G1 3HL, United Kingdom; DOB 01 Nov 1972 to 30 Nov 1972; nationality Italy (individual) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: CHEXX ITALIA SRL; Linked To: THE PAYMENTS FACTORY LTD.; Linked To: COUNTING HOUSE SERVICES LTD.; Linked To: PACNET GROUP).

8. HANRAHAN, Siobhan Ann, Shannon Airport House, Shannon Free Zone, Shannon, County Clare, Ireland; Meadow View, Clonlohan, Newmarket-on-Fergus, County Clare, Ireland; DOB May 1972 (individual) [TCO] (Linked To: PACNET HOLDINGS LIMITED; Linked To: PACNET SERVICES LTD.; Linked To: PACNET CONNECTIONS LIMITED; Linked To: PACNET SERVICES (IRELAND) LIMITED; Linked To: AEROPAY LIMITED; Linked To: PACNET EUROPE; Linked To: PACNET GROUP).

9. HUMPHREYS, Gerard Alphonsus (a.k.a. HUMPHREYS, Gerry), Brittas House, Brittas, County Limerick, Ireland; D11 Glyme Court, Oxford Office Village, Langford Lane, Oxford Oxon OX5 1LQ, United Kingdom; DOB 17 Jul 1958; nationality Ireland; Passport B781829 (Ireland) (individual) [TCO] (Linked To: PACNET AIR; Linked To: PACNET HOLDINGS LIMITED; Linked To: CHEXX INC.; Linked To: PACNET SERVICES (IRELAND) LIMITED; Linked To: AEROPAY LIMITED; Linked To: PACNET EUROPE; Linked To: PACNET GROUP).

10. MACBAIN, Donna Maria, Parkshot House, 5 Kew Road, Richmond, Surrey TW9 2PR, United Kingdom; DOB 01 Feb 1979 to 28 Feb 1979; nationality United Kingdom (individual) [TCO] (Linked To: COUNTING HOUSE SERVICES LTD.; Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

11. SNYMAN, Estelle, Shannon Airport House, Shannon, County Clare, Ireland; DOB 01 Nov 1964 to 30 Nov 1964 (individual) [TCO] (Linked To: PACNET HOLDINGS LIMITED; Linked To: PACNET GROUP).

12. WEEKES, Brian, Attyterilla, Ballygriffey Road, Ruan, County Clare, Ireland; DOB 18 Feb 1963 (individual) [TCO] (Linked To: PACNET EUROPE; Linked To: PACNET GROUP).

Entities

1. PACNET GROUP, Canada; Chile; United Kingdom; United States; Ireland; Brazil; France; Hong Kong; India; Malta; Switzerland; South Africa [TCO].

2. ACCU–RATE CORPORATION, 2573 Carling Ave., Ottawa, ON K2B 7H7, Canada; Web site *www.accu-rate.ca;* Registration ID M08609375 (Canada); Company Number 4131894 (Canada) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: DAVIS, Robert Paul; Linked To: BOIVIN, Marie; Linked To: PACNET EUROPE; Linked To: PACNET GROUP).

3. AEROPAY LIMITED (a.k.a. POINTS EAST LIMITED), D11 Glyme Court, Oxford Office Village, Langford Lane, Oxford Oxon OX5 1LQ, United Kingdom; 70 Empress Court, Woodin's Way, Oxford, Oxfordshire OX1 1HG, United Kingdom; Company Number 05648577 (United Kingdom) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET HOLDINGS LIMITED; Linked To: PACNET GROUP).

4. CHEXX INC. (a.k.a. CHEXX AMERICAS; a.k.a. CHEXX INC. LIMITED), 4th Floor, 595 Howe St., Vancouver, BC V6C 2T5, Canada; Shannon Airport House, Shannon, Co. Clare V14E370, Ireland; Bishopbrook House, Cathedral Avenue, Wells, Somerset BA5 1FD, United Kingdom; nationality Canada; alt. nationality United Kingdom; alt. nationality Ireland; Web site *www.chexxinc.com;* Company Number 04424343 (United Kingdom); alt. Company Number 209294 (Ireland); alt. Company Number 471636 (Ireland) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET EUROPE; Linked To: PACNET GROUP).

5. CHEXX ITALIA SRL, Largo San Giuseppe 3/32, Genova 16121, Italy; V.A.T. Number IT02326870991; Commercial Registry Number GE 477550 (Italy); Fiscal Code 02326870991 (Italy) [TCO] (Linked To: DAVIS, Robert Paul; Linked To: FERRARI, Raffaella; Linked To: PACNET GROUP).

6. COUNTING HOUSE SERVICES LTD. (a.k.a. UK COUNTING HOUSE LTD.), 595 Howe Street, 4th Floor, Vancouver, BC V6C 2T5, Canada; 410–900 Howe Street, Vancouver, British Columbia V672M4, Canada; 4410–900 Howe Street, Vancouver, BC V6Z 2M4, Canada; 5 Kew Road, Richmond, Surrey TW9 2PR, United Kingdom; 43 Princeton Highstown Rd., Suite D, Princeton Junction, NJ 08550, United States; Tel Aviv, Israel; Web site *www.countinghouseservices.com;* alt. Web site *www.countinghouseltd.com;* Registration ID 31000078006605 (United States); alt. Registration ID 31000078141851 (United States); alt. Registration ID M10716144 (Canada); Company Number 09835705 (United Kingdom); alt. Company Number BC0853818 (Canada) [TCO] (Linked To: MACBAIN, Donna Maria; Linked To: PACNET SERVICES LTD.; Linked To: FERRARI, Raffaella; Linked To: DAVIS, Robert Paul; Linked To: PACNET GROUP).

7. DEEPCOVE LABS (a.k.a. DEEPCOVE LABORATORIES LTD.), 4th Floor, 595 Howe Street, Vancouver, BC V6C 2T5, Canada; Web site *www.deepcovelabs.com* [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: DAY, Rosanne Phyllis; Linked To: PACNET GROUP).

8. INDIAN RIVER (UK) LTD., D11 Glyme Court, Oxford Office Village, Langford Lane, Kidlington, Oxon OX5 1LQ, United Kingdom; Company Number 07927999 (United Kingdom) [TCO] (Linked To: PACNET CONNECTIONS LIMITED; Linked To: PACNET GROUP).

9. MANX RARE BREEDS LTD. (a.k.a. BALLALOAGHTAN FARM), The Barn Ballaloaghtan Kerrowkeil Hamlet, Grenaby IM9 3BB, United Kingdom; Web site *www.manxrarebreeds.com* [TCO] (Linked To: DAVIS, Robert Paul; Linked To: PACNET GROUP).

10. PACNET AIR (a.k.a. PACIFIC NETWORK AIR LTD.), Suite 3, 3rd Floor, Britannia House, St. Georges Street, Douglas, Isle of Man IM1 1JD, United Kingdom; Web site *www.pacnetair.com;* Company Number M1025900 (United Kingdom) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

11. PACNET BRAZIL (a.k.a. MMC CLUB; a.k.a. PACNET SERVICES DO BRASIL LTDA.; a.k.a. PACNET SERVICES DO BRASIL S S LTDA ME), Rue Adelino Fernandes 679, 1340 sala 6, Bairro Jardim Planalto, CEP 13160.000 Artur Nogueira, SP, Brazil; Rua Doutor Fernando Arens 679, Artur Nogueira, Sao Paulo 13160–000, Brazil; Identification Number 05032174000150 (Brazil) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

12. PACNET CHILE (a.k.a. THE PAYMENTS FACTORY CHILE LIMITADA), Av. Vicuna Mckenna 2598, Macul, Santiago de Chile, Chile [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

13. PACNET CONNECTIONS LIMITED, Shannon Airport House, Shannon Free Zone, Co. Clare, Ireland; 4 Michael Street, Co. Limerick, Ireland; Registration ID 332576 (Ireland) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

14. PACNET EUROPE, Shannon Airport House, SFZ, Country Clare, Ireland; Web site *www.pacnetservices.ie;* alt. Web site *www.pacnetservices.com* [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

15. PACNET FRANCE (a.k.a. PACNET SERVICES (FRANCE) SARL), 17 rue de Teheran, 75008 Paris, France [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

16. PACNET HOLDINGS LIMITED (f.k.a. COUNTING HOUSE (EUROPE) LIMITED), Shannon Airport House, Shannon Free Zone, Co. Clare, Ireland; Four Michael Street, Limerick, Ireland; Registration ID EO348346 (Ireland) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

17. PACNET HONGKONG (a.k.a. PACNET SERVICES (HK) LTD.), 2001 Central Plaza, 18 Harbour Road, Wanchai, Hong Kong [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

18. PACNET INDIA (a.k.a. PACNET SERVICES (INDIA) PRIVATE LIMITED), 208, Rewa Chambers, 31 New Marine Lines, Mumbai 400 020, India; National ID No. U67190MH2005PTC15766 (India) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

19. PACNET MALTA (a.k.a. PACNET SERVICES (MALTA) LTD.), The Dixcart Suite, Level 11, Le Meridien, St. Julians, Malta; The Dixcart Suite, Level 11, LE, 39, Main Street, Balluta Bay, St. Julians STJ1017, Malta; Company Number C 52227 (Malta) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

20. PACNET SERVICES (IRELAND) LIMITED, 222 Shannon Airport House, Shannon, Co. Clare, Ireland; Registration ID 452666 (Ireland) [TCO] (Linked To: PACNET HOLDINGS LIMITED; Linked To: PACNET GROUP).

21. PACNET SERVICES LTD. (a.k.a. PACIFIC NETWORK SERVICES LTD.; a.k.a. PACNET AMERICAS; a.k.a. PACNET CANADA; a.k.a. PACNET SERVICES AMERICAS LTD.), Fourth Floor, 595 Howe St, Vancouver, BC V6C 2T5, Canada; Parkshot House, 5 Kew Road, Richmond, Surrey, England TW9 2PR, United Kingdom; Registration ID M08842780 (Canada); Company Number BC0469083 (Canada); License 15128950 (Canada) [TCO] (Linked To: DAY, Rosanne Phyllis; Linked To: PACNET GROUP).

22. PACNET SUISSE (a.k.a. PACNET SERVICES (SUISSE) SA), Carrefour du Rive 1, Geneva, Switzerland; Alpenstrasse 15, 6304, Zug, Switzerland; Identification Number CHE–109.623.231 (Switzerland); alt. Identification Number CH66012280021 (Switzerland) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

23. PACNET UK (a.k.a. PACIFIC NETWORK SERVICES (UK) LTD.), The Old Mill, Park Road, Shepton Mallet, Somerset IK BA4 5BS, United Kingdom [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

24. PACNET ZAR (f.k.a. GOLDEN DIVIDEND 234 (PTY) LTD.; a.k.a. PACNET SERVICES ZAR (PROPRIETARY) LTD.), 13 Wellington Road, Parktown, Johannesburg 2193, South Africa; 22 Wellington Road, Parktown, Western Cape 2193, South Africa; Private Bag X60500, Houghton, Guateng 2041, South Africa; Registration ID 200503498307 (South Africa); Tax ID No. 9871659141 (South Africa) [TCO] (Linked To: PACNET SERVICES LTD.; Linked To: PACNET GROUP).

25. THE PAYMENTS FACTORY LTD. (f.k.a. RUMENO SONCE 60 D.O.O.; a.k.a. THE PAYMENTS FACTORY D.O.O.; a.k.a. THE PAYMENTS FACTORY LLC; a.k.a. THE PAYMENTS FACTORY LLC—PERU; a.k.a. THE PAYMENTS FACTORY PERU LLC), 69 Buchanan Street, Glasgow, Scotland G1 3HL, United Kingdom; 4th Floor, 595 Howe Street, Vancouver, BC V6C 2T5, Canada; Suite 3, 3rd Floor, Britannia House, St. Georges Street, Douglas, Isle of Man IM1 1JD, United Kingdom; 1521 Concord Pike, #303, Wilmington, DE 19803, United States; Pasaje Retiro 574 of. 201, Ciudad Satelite, Santa Rosa, Provincia Callao, Peru; 2–22–7, Shibuya, Shibuya-ku, Tokyo 150–0002, Japan; Jr. Retiro No. 574, Dpto. 201, Callao 01, Peru; 3 Independent Dr., Jacksonville, FL 32202–5004, United States; Tehnoloski park 24, Ljubljana 1000, Slovenia; Shannon Airport House SFZ, County Clare V14 E370, Ireland; 89/247 Soi Ruammit Phatthana Yeak 1, Tharang Sub-District, Bang Kehn District, Bangkok Province, Thailand; Web site *www.thepaymentsfactory.com;* Business Registration Document # 6974988 (Slovenia); Tax ID No. 47210885 (Slovenia); Commercial Registry Number 20549092501 (Peru); Company Number SC514975 (United Kingdom) [TCO] (Linked To: DAVIS, Robert Paul; Linked To: FERRARI, Raffaella; Linked To: PACNET GROUP).

Blocked Property

1. N840PN; Aircraft Model 690c; Aircraft Operator Pacnet Air; Aircraft Manufacturer's Serial Number (MSN) 11679; Aircraft Tail Number N840PN (aircraft) [TCO] (Linked To: DAVIS, Robert Paul; Linked To: PACNET AIR; Linked To: PACNET GROUP).

Dated: September 22, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–23272 Filed 9–26–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0782]

Revision to a Previously Approved Information Collection (Veterans Benefits Administration (VBA) Voice of the Veteran Customer Satisfaction Continuous Measurement Survey) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 28, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0782" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title:

a. Compensation Enrollment Survey
b. Compensation Servicing Survey
c. Pension Enrollment Survey
d. Pension Servicing Survey
e. Specially Adapted Housing (SAH) Servicing Survey
f. Loan Guaranty (LGY) Home Loan Survey
g. Education Enrollment Survey
h. Education Servicing Survey
i. Vocational Rehabilitation & Employment (VRE) Enrollment Survey
j. Vocational Rehabilitation (VRE) Servicing Survey Instrument
k. Vocational Rehabilitation & Employment VRE Non-Participant Survey

OMB Control Number: 2900–0782.

Type of Review: Revision of an approved collection.

Abstract: In 2008, VBA recognized a need to develop and design an integrated, comprehensive Voice of the Veteran (VOV) Continuous Measurement (CM) program for its lines of business: Compensation Service (CS), Pension Service (PS), Education (EDU) Service, Loan Guaranty (LGY) Service and Vocational Rehabilitation and Employment (VR&E) Service. The VOV CM program provides insight regarding Veterans and beneficiaries interactions with the benefits and services provided by VBA. The VOV CM provides VBA leadership with actionable Veteran feedback on how VBA is performing. These insights help identify opportunities for improvement and measure the impact of improvement initiatives.

VBA conducted a benchmark study in Fiscal Year 2013 (October 2012 through January 2013) in order to validate the survey instruments, identify Key Performance Indicators, and establish performance benchmarks. Findings and recommendations were presented to VBA Leadership and stakeholders within each line of business in April 2013.

Based on interviews conducted, VBA has separated the Veterans experience with VBA into two categories:

1. *Access* to a Benefit. This measures the enrollment experience transaction with the beneficiary or Veteran.

2. *Servicing* of a Benefit. This measures the ongoing relationship experiences with the beneficiary or Veteran.

Each business line desired to understand the components of the overall customer experience. Each VBA business line wanted to engage their Veteran population with relevant questions regarding their experience. The following outlines how that is approached with each of the lines of business.

Affected Public: Individuals or households.

Compensation and Pension Programs

During 2014 J.D. Power fielded three survey instruments for the Compensation and Pension programs. Discussions with stakeholders from both programs indicated that one survey instrument could be used for both Compensation and Pension *Enrollment* category claimants. In FY2015, Compensation and Pension identified the need to separate the *Enrollment* survey to better serve the business needs of each program.

The *Compensation Enrollment* survey pool for the VOV Continuous Measurement Study includes individuals who have received a decision on a compensation benefit claim within 30 days prior to the fielding period. This includes those who were found eligible on a new or subsequent claim and those who have been denied and lack a current appeal of the decision. The *Pension Enrollment* survey pool includes individuals who have received a decision on a pension benefit claim within the past 30 days. The *Compensation Servicing* survey pool includes individuals who received a decision and are receiving benefit payments. The *Pension Servicing* survey pool includes individuals who established and completed a claim in the previous fiscal year.

Education Program

J.D. Power fielded two survey instruments for Education Service. The *Education Enrollment* survey pool includes individuals who received a decision on their education benefit application within 90 days (*i.e.,* the original end-product was cleared within the past 90 days) prior to the fielding period. The *Education Servicing* survey pool includes beneficiaries who are currently receiving benefits. The definition of those receiving benefits varies based on the educational program. Chapter 33 beneficiaries who have received at least 2 payments for "tuition" in the past 9 months are included in the survey pool. Chapter 30, Chapter 1606, and Chapter 1607 beneficiaries who have received 5 monthly payments during the past 9 months are included.

Loan Guaranty and Specially Adapted Housing Programs

J.D. Power fielded two survey instruments for Loan Guaranty Service. The survey pool for the tracking study for the *LGY Enrollment* questionnaire includes individuals from a 30 day period who closed on a VA home loan in the 90 days prior to the fielding period. The sample is stratified as follows: (1) Those who closed on purchase loans, (2) those who received loans for interest rate reductions, and (3) those who obtained cash out or other refinancing. The survey pool for the tracking study for the *SAH Servicing* questionnaire includes individuals who are eligible for a specially adapted housing grant and in the past 12 months have: (1) Received an approval on their grant and are currently somewhere in post-approval, (2) have had all their funds dispersed and final accounting is not yet complete, and (3) have had all of their funds dispersed and final accounting is complete.

Vocational Rehabilitation and Employment Program

J.D. Power fielded three survey instruments for Vocational Rehabilitation & Employment Service (VR&E). The *VR&E Enrollment* survey pool includes individuals who applied within the last 12 months, entered Evaluation and Planning and (1) entered any of the following case statuses: Extended Evaluation, Independent Living (IL), Rehabilitation to Employment (RTE), or Job Ready Status (JRS) (excludes re-applicants), or (2) were found not entitled. The *VR&E Servicing* survey pool includes individuals who in the last 30 days were in a plan of services for more than 60 days, all rehabilitated participants, and MRGs. Participants who interrupted their plan are excluded. The VR&E Non-Participant survey explores why eligible individuals chose not to pursue the benefit entitlement. The *VR&E Non-Participant* questionnaire survey pool includes individuals who dropped out of the program prior to completing a rehabilitation plan. The sample is stratified as follows: (1) Applicants who never attended the initial meeting with a counselor, (2) applicants who were entitled to the program but did not pursue a plan of service, and (3) applicants who started, but did not complete a rehabilitation plan (*i.e.*, negative closures).

Estimated Annual Burden: 32,701 hours per year for the life of the collection.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once Annually (Respondents will not be surveyed more than once in a given year).

Estimated Number of Respondents: 130,800.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–23241 Filed 9–26–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Proposed Information Collection (State Cemetery Data Sheet and Cemetery Grant Document)

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTIVITY: OMB Review.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 27, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–0559" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0559."

SUPPLEMENTARY INFORMATION:

Title: State Cemetery Data, VA Form 40–0241 and Cemetery Grant Documents, 40–0895 Series.

OMB Control Number: 2900–0559.

Type of Review: Revision of an approved collection.

Abstract: VA Form 40–0241 and Cemetery Grant Documents, 40–0895 Series, are required to provide data regarding the number of interments conducted at State Veterans cemeteries and support grant applications each year. This data is necessary for budget, oversight and compliance purposes associated with exiting and establishment of new State and Tribal government Veteran cemeteries.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,050.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 286.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–23240 Filed 9–26–16; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 52
Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0189; FRL–9952–03–Region 6]

Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a final Federal Implementation Plan (FIP) addressing the requirements of the Regional Haze Rule and interstate visibility transport for the portions of Arkansas' Regional Haze State Implementation Plan (SIP) that EPA disapproved in a final rule published in the **Federal Register** on March 12, 2012. In that action, we partially approved and partially disapproved the State's plan to implement the regional haze program for the first planning period. This final rule addresses the Regional Haze Rule's requirements for Best Available Retrofit Technology (BART), reasonable progress, and a long-term strategy (LTS), as well as the requirements of the Clean Air Act (CAA or Act) regarding interference with other states' programs for visibility protection (interstate visibility transport) triggered by the issuance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. The FIP includes sulfur dioxide (SO_2), nitrogen oxide (NO_X), and particulate matter (PM) emission limits for nine units located at six facilities to address BART requirements (these limits also satisfy reasonable progress requirements for these sources); and SO_2 and NO_X emission limits for two units located at one power plant to address the reasonable progress requirements. We also provide reasonable progress goals (RPGs) for Arkansas' Class I areas. We are prepared to work with the State on a SIP revision that would replace some or all elements of the FIP.

DATES: This final rule is effective on October 27, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2015–0189. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina at 214–665–7241; or *Medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA. Also throughout this document, when we refer to the Arkansas Department of Environmental Quality (ADEQ), we mean Arkansas.

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I. Introduction

The purpose of Federal and state regional haze plans is to achieve a national goal, declared by Congress, of restoring and protecting visibility at 156 Federal Class I areas across the United States, most of which are national parks and wilderness areas with scenic vistas enjoyed by the American public. The national goal, as described in CAA Section 169A, is "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution." States are required to submit SIPs that ensure reasonable progress toward the national goal of remedying anthropogenic visibility impairment in Federal Class I areas. Arkansas has two Federal Class I areas, the Caney Creek Wilderness Area (Caney Creek) and Upper Buffalo Wilderness Area (Upper Buffalo). Please refer to our previous rulemaking on the Arkansas Regional Haze SIP for additional background information regarding the CAA, regional haze, and the Regional Haze Rule.[1]

In our previous action on the Arkansas Regional Haze SIP, we approved a number of elements but disapproved others.[2] In this final action, we are addressing these disapproved elements. We are establishing BART emission limits for nine units at six facilities that contribute to visibility impairment at Caney Creek and Upper Buffalo in Arkansas, as well as the Hercules-Glades Wilderness Area (Hercules-Glades) and the Mingo National Wildlife Refuge (Mingo) in Missouri. These facilities are subject to BART controls for emissions of SO_2, NO_X, and PM. The BART sources are the Arkansas Electric Cooperative Corporation Carl E. Bailey Generating Station (AECC Bailey) Unit 1; Arkansas Electric Cooperative Corporation John L. McClellan Generating Station (AECC McClellan) Unit 1; American Electric Power (AEP) Flint Creek Power Plant Unit 1; Entergy White Bluff Plant Units 1, 2, and Auxiliary Boiler; Entergy Lake Catherine Plant Unit 4; and Domtar Ashdown Mill Power Boilers Nos. 1 and 2. In addition, we are establishing SO_2 and NO_X emission limits for the Entergy Independence Plant Units 1 and 2 pursuant to the reasonable progress and long-term strategy provisions of the Regional Haze Rule. We have calculated numerical RPGs for Caney Creek and Upper Buffalo that reflect the visibility improvement anticipated by 2018 from the combination of control measures from the approved portion of the Arkansas Regional Haze SIP and this FIP.

We are also making a finding that the combination of the approved portion of the Arkansas Regional Haze SIP and this FIP satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility (interstate visibility transport requirement) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. This provision of the CAA requires that each state's SIP have adequate provisions to prohibit in-state emissions from interfering with measures required to protect visibility in any other state. To address this requirement, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. In our March 12, 2012 final action on the Arkansas Regional Haze SIP, we also partially approved and partially disapproved the SIP submittal with respect to the interstate transport visibility requirement under CAA section 110(a)(2)(D)(i)(II). This FIP fully addresses the deficiencies we identified in our final action on the Arkansas Regional Haze SIP with respect to the interstate visibility transport requirement under CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

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[1] 76 FR 64186, October 17, 2011 (proposed action); and 77 FR 14604, March 12, 2012 (final action).

[2] 77 FR 14604.

In this document, we summarize our responses to comments received during our comment period on our proposed rule and indicate where we have made adjustments based on the comments and additional information we received. In some cases, we have adjusted the emission limits, compliance deadlines, and requirements for testing and demonstration of compliance in response to information received during the comment period. We also received several comments, from Entergy and Sierra Club, after the close of the comment period, which included new information on an alternative approach for White Bluff. We do not address these late comments in our rulemaking and they are not a basis for our decision in this action. We do note that the new information regarding an alternative approach may have promise with respect to addressing the BART requirements for White Bluff, and we encourage the State to consider it as it develops a SIP revision to replace our FIP.

EPA is promulgating this partial FIP to address the deficiencies in the Arkansas Regional Haze SIP and the SIP revision submitted by the State to address the interstate visibility transport requirements.[3] The State retains its authority to submit a revised state plan consistent with CAA and Regional Haze Rule requirements. EPA stands ready to work with the State on a SIP revision that would replace some or all elements of the FIP.

II. History of State Submittals and Our Actions

A. State Submittals and EPA Actions

Arkansas submitted a SIP to address the regional haze requirements for the first planning period on September 23, 2008. On August 3, 2010, Arkansas submitted a SIP revision that addressed the Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19, Chapter 15, which is the State rule that identifies the BART-eligible and subject-to-BART sources in Arkansas and establishes the BART emission limits that subject-to-BART sources are required to comply with. On September 27, 2011, the State submitted supplemental information related to regional haze. We are hereafter referring to these regional haze submittals collectively as the "Arkansas Regional Haze SIP." On April 2, 2008, Arkansas submitted a SIP revision to address the interstate visibility transport requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. On October 17, 2011, we published our proposed partial approval and partial disapproval of the Arkansas Regional Haze SIP and the interstate visibility transport SIP.[4] Our final rule partially approving and partially disapproving the Arkansas Regional Haze SIP and interstate visibility transport SIP was published on March 12, 2012.[5] We explained in our proposed and final actions on the Arkansas Regional Haze SIP that we elected not to promulgate a FIP concurrently with our partial disapproval action because ADEQ expressed its intent to revise the disapproved portions of the SIP and we therefore wanted to provide the state time to submit a SIP revision.[6]

Our final partial disapproval of the Arkansas RH SIP and interstate visibility transport SIP started a 2-year FIP clock such that we have an obligation to approve a SIP revision and/or promulgate a FIP to address the disapproved portions of the SIP within 2 years of our final partial disapproval action. We began working in 2012 with ADEQ and the affected facilities to revise the disapproved portions of the SIP. However, a SIP revision was not submitted and the FIP clock expired in April 2014. On April 8, 2015, we proposed a FIP to address the disapproved portions of the Arkansas Regional Haze SIP and interstate visibility transport SIP.[7] On May 1, 2015, we published a notice extending the public comment period for our FIP proposal and announcing the availability in the docket of supplemental modeling we performed for the Entergy Independence Plant following the April 8, 2015 publication of our FIP proposal.[8] On July 23, 2015, we published a notice reopening the public comment period for our FIP proposal by 15 days in response to a request we received from the Domtar Ashdown Mill so that the facility would be able to complete modeling work and submit to us information it deemed to be essential and related to a significant aspect of the proposed FIP requirements for the Domtar Ashdown Mill.[9] The reopening of the comment period also allowed other interested persons additional time to submit comments to us on our FIP proposal. On April 4, 2016, we published a notice and welcomed comment on supplemental information added to the docket which we relied on in our FIP proposal published on April 8, 2015, but which was inadvertently omitted from the docket at the time we proposed our FIP.[10] Our notice published on April 4, 2016, also reopened the public comment period for our FIP proposal until May 4, 2016, but strictly limited the reopening of the comment period to our calculations of the revised RPGs, as presented in the spreadsheet we made available at that time in the docket.[11] In this action, we are finalizing our FIP proposal published on April 8, 2015, and the associated aforementioned supplemental notices.

B. EPA's Authority To Promulgate a FIP

Under CAA section 110(c), EPA is required to promulgate a FIP at any time within 2 years of the effective date of a finding that a state has failed to make a required SIP submission or has made an incomplete submission, or of the date that EPA disapproves a SIP in whole or in part. The FIP requirement is terminated only if a state submits a SIP, and EPA approves that SIP as meeting applicable CAA requirements before promulgating a FIP. CAA section 302(y) defines the term "Federal implementation plan" in pertinent part, as a plan (or portion thereof) promulgated by EPA "to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy" in a SIP, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions or emissions allowances).

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[3] These deficiencies are discussed in our March 12, 2012 final action on the Arkansas Regional Haze SIP and SIP revision to address the interstate visibility transport requirements. See 77 FR 14604.

[4] 76 FR 64186.

[5] 77 FR 14604.

[6] See 76 FR 64186, 64188 (proposed action) and 77 FR 14604, 14672 (final action).

[7] 80 FR 18944.

[8] 80 FR 24872.

[9] 80 FR 43661.

[10] 81 FR 19097.

[11] See the spreadsheet titled "Caney Creek and Upper Buffalo Wilderness Areas Reasonable Progress Goals (CACR UPBU RPG analysis.xlsx)," which is available in the docket for our rulemaking.

As discussed above, in a final action published on March 12, 2012, we disapproved in part the Arkansas Regional Haze SIP and the SIP submitted by the state to address the interstate visibility transport requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.[12] That final action became effective on April 11, 2012. Therefore, EPA is required under CAA section 110(c) to promulgate a FIP for the portions of the Arkansas Regional Haze SIP and the SIP submittal to address the interstate visibility transport requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS that we disapproved on March 12, 2012.

III. Summary of Our Proposed Rule

In this section, we provide a summary of our proposed rule that was published in the **Federal Register** on April 8, 2015,[13] and the associated supplemental notices published on May 1, 2015,[14] and April 4, 2016,[15] as background for understanding this final action. Our electronic docket at *www.regulations.gov* contains Technical Support Documents (TSDs) and other materials that supported our proposal and supplemental notices.

A. Regional Haze

Our FIP proposal addressed the disapproved portions of the Arkansas Regional Haze SIP and interstate visibility transport SIP. In our March 12, 2012 final action on the Arkansas Regional Haze SIP, we disapproved some of the state's BART determinations and we also determined that the SIP did not include the required analysis of the four reasonable progress factors. Therefore, we partially disapproved the state's LTS for Caney Creek and Upper Buffalo and also disapproved the RPGs established by the state.

CAA section 169A(b)(2)(A) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the "best available retrofit technology," as determined by the state or EPA in the case of a plan promulgated under section 110(c) of the CAA. Under the Regional Haze Rule, states are directed to conduct BART determinations for such "BART-eligible" sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states or EPA in a FIP also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. CAA section 169(g)(2) and the Regional Haze Rule at 40 Code of Federal Regulations (CFR) § 51.308(e)(1)(A) provide that in determining BART, the state or EPA in a FIP shall take into consideration the following factors: Costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. We commonly refer to these as the BART factors, or the five statutory factors. CAA section 169(g)(1) and § 51.308(d)(1) also require that in determining reasonable progress, there shall be taken into consideration the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. We commonly refer to these as the reasonable progress factors, or the four statutory factors. Consistent with the requirement in CAA section 169A(b) that states include in their regional haze SIP a 10—15 year strategy for making reasonable progress, § 51.308(d)(3) requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet any applicable RPGs. The LTS must include enforceable emissions limitations, compliance schedules, monitoring and recordkeeping requirements, and various supporting documentation and analyses to ensure that the SIP or FIP will provide reasonable progress toward the national goal of natural visibility conditions.

Our FIP proposal included proposed BART determinations for nine units at six facilities and proposed reasonable progress determinations for two units at one facility in Arkansas. These determinations resulted in proposed emission limits, compliance schedules, and other requirements for these sources. The proposed regulatory language was included under Part 52 at the end of that document. We also addressed the RPGs, as well as the LTS requirements. Lastly, we proposed that the approved measures in the Arkansas Regional Haze SIP and measures in our proposed FIP would adequately address the interstate transport of pollutants that affect visibility requirement for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

Georgia Pacific-Crossett Mill 6A and 9A Power Boilers: In our FIP proposal, we proposed to find that the Georgia Pacific-Crossett Mill 6A Boiler is a BART-eligible source, but not subject to BART. We also proposed to find that the 9A Boiler, which the State had previously determined was BART-eligible, is not subject to BART. Our proposed determinations were based on the company's newly provided analysis and documentation, including BART screening modeling conducted in 2011 by Georgia Pacific based on revised emission limits from a permit issued on May 23, 2012, and using 2001, 2002, and 2003 meteorology. The modeling showed the maximum visibility impact from the boilers was 0.359 deciviews (dv) at Caney Creek, which is below the 0.5 dv threshold the state used in the Arkansas Regional Haze SIP to identify subject-to-BART sources. Prior to issuing our FIP proposal, we had communicated to ADEQ our concern with relying on the company's BART screening modeling that was based on revised emission limits from a permit issued in 2012, without documentation that these emission limits were representative of the baseline period emissions.[16] To address our concern, the company provided estimates of maximum 24-hour emission rates for the 6A and 9A Boilers from the 2001–2003 baseline period to demonstrate that these emission rates were lower than the revised emission limits that it modeled in its 2011 BART screening modeling.[17] This indicated that the 2011 BART screening modeling that was based on allowable emissions was conservative in terms of representing the impact that the source had on visibility in the 2001–2003 period, the period that matters for the subject-to-BART determination, and we proposed to find that it is reasonable to conclude based on the modeling analysis and documentation provided by Georgia Pacific that the 6A and 9A Boilers had visibility impacts below 0.5

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[12] 77 FR 14604.

[13] 80 FR 18944.

[14] 80 FR 24872.

[15] 81 FR 19097.

[16] See file titled "Region 6 feedback on Georgia Pacific 6A and 9A Boilers_3–4–2013," which is found in the docket associated with this rulemaking.

[17] As discussed in our proposal, Georgia Pacific estimated the maximum 24-hour emission rates using daily fuel usage data and emission factors from AP–42, *Compilation of Air Pollutant Emission Factors.* See 80 FR 18944, 18948.

dv during the 2001–2003 baseline period and are therefore not subject to BART.

AECC Bailey Unit 1: We proposed that BART for SO_2 and PM is the use of fuels with 0.5% or lower sulfur content by weight. We also proposed to require that, after the effective date of the final rule, the facility shall not purchase fuel that does not meet the sulfur content requirement, but to allow the facility 5 years to burn its existing supply of No. 6 fuel oil, in accordance with any operating restrictions enforced by ADEQ. We proposed to require the facility to comply with the requirement to use fuels with 0.5% or lower sulfur content by weight no later than 5 years from the effective date of the final rule. We proposed that BART for NO_X is the existing emission limit in the permit of 887 lb/hr, which would not necessitate the installation of additional controls. We proposed to require the source to comply with this emission limit for BART purposes as of the effective date of the final rule.

AECC McClellan Unit 1: We proposed that BART for SO_2 and PM is the use of fuels with 0.5% or lower sulfur content by weight. We also proposed to require that, after the effective date of the final rule, the facility shall not purchase fuel that does not meet the sulfur content requirement, but to allow the facility 5 years to burn its existing supply of No. 6 fuel oil, in accordance with any operating restrictions enforced by ADEQ. We proposed to require the source to comply with the requirement to use fuels with 0.5% or lower sulfur content by weight no later than 5 years from the effective date of the final rule. We proposed that BART for NO_X are the existing emission limits in the permit of 869.1 lb/hr for natural gas firing and 705.8 lb/hr for fuel oil firing, which would not necessitate the installation of additional controls. We proposed to require the source to comply with these emission limits for BART purposes as of the effective date of the final rule.

AEP Flint Creek Unit 1: We proposed that BART for SO_2 is an emission limit of 0.06 lb/MMBtu on a 30 boiler-operating-day rolling average, which is consistent with the installation and operation of a type of dry flue gas desulfurization (FGD or "scrubbers") system called Novel Integrated Desulfurization (NID) technology. We stated that the full compliance time of 5 years allowed under the CAA and Regional Haze Rule is appropriate for a new scrubber retrofit, and proposed to require the source to comply with this emission limit no later than 5 years from the effective date of the final rule. We proposed that BART for NO_X is an emission limit of 0.23 lb/MMBtu on a 30 boiler-operating-day rolling average, which is consistent with the installation and operation of new low NO_X burners (LNB) with overfire air (OFA). We proposed to require the source to comply with this emission limit no later than 3 years from the effective date of the final rule.

Entergy White Bluff Units 1 and 2: We proposed that BART for SO_2 for Units 1 and 2 is an emission limit of 0.06 lb/MMBtu on a 30 boiler-operating-day rolling average, consistent with the installation and operation of dry FGD or another control technology that achieves that level of control. We proposed to require the source to comply with this emission limit no later than 5 years from the effective date of the final rule. We proposed that BART for NO_X for Units 1 and 2 is an emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, consistent with the installation and operation of LNB with separated overfire air (SOFA). We proposed to require the source to comply with this emission limit no later than 3 years from the effective date of the final rule.

Entergy White Bluff Auxiliary Boiler: We proposed that the existing emission limit in the permit of 105.2 lb/hr is BART for SO_2, the existing emission limit of 32.2 lb/hr is BART for NO_X, and the existing emission limit of 4.5 lb/hr is BART for PM for the Auxiliary Boiler. These emission limits would not necessitate the installation of additional controls. We proposed to require the source to comply with these emission limits for BART purposes as of the effective date of the final rule.

Entergy Lake Catherine Unit 4: We proposed that BART for NO_X for the natural gas-firing scenario is an emission limit of 0.22 lb/MMBtu on a 30 boiler-operating-day rolling average, consistent with the installation and operation of burners out of service (BOOS). We proposed to require the source to comply with this emission limit no later than 3 years from the effective date of the final rule. We invited public comment specifically on whether this proposed NO_X emission limit is appropriate or whether an emission limit based on more stringent NO_X controls would be appropriate. We did not propose BART determinations for the fuel oil-firing scenario for Lake Catherine Unit 4 in light of the source's commitment to submit to Arkansas a five-factor BART analysis for the fuel oil-firing scenario, to then be submitted to us as a SIP revision for approval, before any fuel oil combustion takes place at Unit 4. We proposed that fuel oil-firing is not allowed to take place at Lake Catherine Unit 4 until BART determinations are promulgated for SO_2, NO_X, and PM for the fuel oil-firing scenario through our approval of a SIP revision and/or promulgation of a FIP.

Domtar Ashdown Mill Power Boiler No. 1: We proposed that BART for SO_2 is an emission limit of 21.0 lb/hr on a 30 boiler-operating-day averaging basis, where boiler-operating-day is defined as a 24-hour period between 12 midnight and the following midnight during which any fuel is fed into and/or combusted at any time in the Power Boiler. This emission limit is consistent with the Power Boiler's baseline emissions and would not necessitate additional controls. We proposed to require the source to comply with this emission limit as of the effective date of the final rule. We proposed to require the source to use a site-specific curve equation,[18] provided to us by the facility, to calculate the SO_2 emissions from Power Boiler No. 1 when combusting bark for purposes of demonstrating compliance with the BART requirement, and to confirm the curve equation using stack testing no later than 1 year from the effective date of the final rule. We also proposed that to calculate the SO_2 emissions from fuel oil combustion for purposes of demonstrating compliance with the BART requirement, the facility must assume that the SO_2 inlet[19] is equal to the SO_2 being emitted at the stack. We invited public comment on whether this method of demonstrating compliance with the proposed SO_2 BART emission limit for Power Boiler No. 1 is appropriate.

We proposed that BART for NO_X is an emission limit of 207.4 lb/hr on a 30 boiler-operating-day rolling average, where boiler-operating-day is defined as a 24-hour period between 12 midnight and the following midnight during which any fuel is fed into and/or combusted at any time in the Power Boiler. This emission limit is consistent with the Power Boiler's baseline emissions and would not necessitate additional controls. We proposed to require the source to comply with this emission limit as of the effective date of the final rule. To demonstrate compliance with this NO_X BART emission limit, we proposed to require the source to conduct annual stack testing. We invited public comment on the appropriateness of this method for demonstrating compliance with the proposed NO_X BART emission limit for Power Boiler No. 1.

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[18] The curve equation is $Y = 0.4005 * X - 0.2645$, where Y = pounds of sulfur emitted per ton dry fuel feed to the boiler and X = pounds of sulfur input per ton of dry bark. The purpose of this equation is to factor in the degree of SO_2 scrubbing provided by the combustion of bark.

[19] We define SO_2 inlet to be the SO_2 content of the fuel delivered to the fuel inlet of the combustion chamber.

Domtar Ashdown Mill Power Boiler No. 2: We proposed that BART for SO_2 is an emission limit of 0.11 lb/MMBtu on a 30 boiler-operating-day rolling average, which we estimated is representative of operating the existing venturi scrubbers at 90% control efficiency and can be achieved through the installation of scrubber pump upgrades and use of additional scrubbing reagent. We indicated that boiler-operating-day is defined as a 24-hour period between 12 midnight and the following midnight during which any fuel is fed into and/or combusted at any time in the Power Boiler. We invited public comment specifically on the appropriateness of our proposed SO_2 emission limit. We proposed to require compliance with this BART emission limit no later than 3 years from the effective date of the final action, but invited public comment on the appropriateness of a compliance date anywhere from 1–5 years. We also proposed to require the source to demonstrate compliance with this emission limit using the existing continuous emissions monitoring system (CEMS).

We proposed that BART for NO_X is an emission limit of 345 lb/hr on a 30 boiler-operating-day rolling averaging basis, consistent with the installation and operation of LNB. We indicated that boiler-operating-day is defined as a 24-hour period between 12 midnight and the following midnight during which any fuel is fed into and/or combusted at any time in the Power Boiler. We proposed to require compliance with this emission limit no later than 3 years from the effective date of the final rule, and invited public comment on the appropriateness of this compliance date. We also proposed to require the source to demonstrate compliance with this emission limit using the existing CEMS.

Power Boiler No. 2 is subject to the Boiler Maximum Achievable Control Technology (MACT) standards for PM required under CAA section 112, and found at 40 CFR part 63, subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters. We proposed to find that the current Boiler MACT PM standard satisfies the PM BART requirement for Power Boiler No. 2. We also proposed that the same method for demonstrating compliance with the Boiler MACT PM standard is to be used for demonstrating compliance with the PM BART emission limit. We proposed to require the source to comply with this emission limit for BART purposes as of the effective date of the final rule.

Proposed Reasonable Progress Determinations: In our proposed rule, we explained that the Central Regional Air Planning Association (CENRAP) CAMx modeling with Particulate Source Apportionment Tool (PSAT) showed that point sources are responsible for a majority of the light extinction at Arkansas Class I areas, contributing approximately 60% of the total light extinction at each Class I area on the 20% worst days in 2002. Point sources contributed 81.04 Mm^{-1} out of 133.93 Mm^{-1} of light extinction at Caney Creek and 77.80 Mm^{-1} out of 131.79 Mm^{-1} of light extinction at Upper Buffalo on the average across the 20% worst days in 2002. Since other source types (*i.e.*, natural, on-road, non-road, and area) each contributed a much smaller proportion of the total light extinction at each Class I area, we decided to focus only on point sources in our reasonable progress analysis for this planning period.

As a starting point in our analysis to determine whether additional controls on Arkansas sources are necessary to make reasonable progress in the first regional haze planning period, we examined the most recent SO_2 and NO_X emissions inventories for point sources in Arkansas. Based on the 2011 National Emissions Inventory (NEI), the Entergy White Bluff Plant, the Entergy Independence Plant, and the AEP Flint Creek Power Plant are the three largest point sources of SO_2 and NO_X emissions in Arkansas.[20] The combined annual emissions from these three sources make up approximately 84% of the statewide SO_2 point-source emissions and 55% of the statewide NO_X point-source emissions. As our proposed rule included SO_2 and NO_X emission limits under BART for White Bluff Units 1 and 2 and Flint Creek Unit 1 that are anticipated to result in a substantial reduction in SO_2 and NO_X emissions from these facilities, we proposed to determine that it is appropriate to eliminate these three units from further consideration of additional controls under the reasonable progress requirements for the first planning period. The Entergy Independence Plant is not subject to BART, and its emissions were 30,398 SO_2 tons per year (tpy) and 13,411 NO_X tpy based on the 2011 NEI. The Entergy Independence Plant is the second largest source of SO_2 and NO_X point-source emissions in Arkansas, accounting for approximately 36% of the SO_2 point-source emissions and 21% of the NO_X point-source emissions in the State. In our proposal, we explained that it is appropriate to focus our reasonable progress analysis on the Entergy Independence Power Plant because it is a significant source of SO_2 and NO_X, as it is the second largest point source for both NO_X and SO_2 emissions in the State. We explained that our proposed SO_2 and NO_X controls under BART for White Bluff Units 1 and 2 and Flint Creek Unit 1 and our evaluation of controls under reasonable progress for the Independence facility would address a sufficient amount of SO_2 and NO_X point source emissions in the State in this first planning period. The fourth largest SO_2 and NO_X point sources in Arkansas are the Future Fuel Chemical Company, with emissions of 3,421 SO_2 tpy, and the Natural Gas Pipeline Company of America #308, with emissions of 3,194 NO_X tpy (2011 NEI). In comparison to the SO_2 and NO_X emissions from the top three point sources (*i.e.*, White Bluff, Independence, and Flint Creek), emissions from these two facilities and remaining point sources in the state are relatively small. Therefore, we did not evaluate other Arkansas point sources in our reasonable progress analysis. We explained that it is therefore appropriate to defer the consideration and evaluation of any additional sources under reasonable progress to future regional haze planning periods.

We conducted source-specific reasonable progress analyses of potential SO_2 and NO_X controls for Independence Units 1 and 2 and conducted CALPUFF modeling to assess the baseline visibility impacts from the facility and potential visibility benefits of controls. Based on these analyses, we proposed two options in the alternative for satisfying the reasonable progress requirements for Independence Units 1 and 2. Under Option 1, we proposed to establish both SO_2 and NO_X emission limits. We proposed to require compliance with an SO_2 emission limit of 0.06 lb/MMBtu for Independence Units 1 and 2 based on a 30 boiler-operating-day rolling average basis, consistent with the installation and operation of dry FGD. We proposed to require Independence Units 1 and 2 to comply with this emission limit no later than 5 years from the effective date of the final rule. We proposed to require compliance with a NO_X emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day averaging basis, consistent with the installation and operation of LNB/SOFA. We proposed to require Independence Units 1 and 2 to comply with this emission limit no later than 3 years from the effective date of the final rule.

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[20] See NEI 2011 v1. A spreadsheet containing the emissions inventory is found in the docket for our proposed rulemaking.

We proposed to require SO_2 controls based on our evaluation of the four reasonable progress factors, our CALPUFF modeling of the anticipated benefits of controls, and the existing CENRAP CAMx modeling. Specifically, we proposed that dry FGD was cost-effective and would provide considerable visibility improvement on the days where Independence has the largest impacts at nearby Class I areas. Additionally, the CENRAP CAMx modeling showed that on most of the 20% worst days in 2002, total extinction is dominated by sulfate at both Caney Creek and Upper Buffalo.[21] Therefore, we concluded that the substantial SO_2 emissions reductions that would be achieved by our proposed SO_2 controls for Independence Units 1 and 2 would accordingly reduce visibility extinction at Arkansas' Class I areas on the 20% worst days.

We also proposed to require NO_X controls under Option 1 based on our evaluation of the four reasonable progress factors, our CALPUFF modeling of the anticipated benefits of controls, and the existing CENRAP CAMx modeling. Specifically, we proposed that LNB/SOFA was very cost-effective and would provide considerable visibility improvement on the days where Independence has the largest impacts at nearby Class I areas. In addition, the CENRAP CAMx modeling showed that total extinction at Caney Creek was dominated by nitrate on 4 of the days that comprise the 20% worst days in 2002, while a significant portion of the total extinction at Upper Buffalo was due to nitrate on 2 of the days that comprise the 20% worst days in 2002.[22] Therefore, we concluded that our proposed NO_X controls on Independence Units 1 and 2 would improve visibility on some of the 20% worst days. In the alternative, we proposed under Option 2 to require only SO_2 controls for Independence Units 1 and 2 under the CAA's reasonable progress requirements. Our reasoning for proposing to require only SO_2 controls under Option 2 was that nitrate from point sources is not a primary contributor to the total light extinction at Arkansas Class I areas on most of the 20% worst days, so NO_X controls would not offer as much visibility improvement on the most impaired days as SO_2 controls. In our proposed rule, we specifically solicited public comment on Options 1 and 2.

In addition to Options 1 and 2, we also solicited public comment on any alternative SO_2 and NO_X control measures that would address the regional haze requirements for Entergy White Bluff Units 1 and 2 and Entergy Independence Units 1 and 2 for this planning period. We noted that this could include, but was not limited to, a combination of early unit shutdowns and other emissions control measures that would achieve greater reasonable progress than the BART and reasonable progress requirements we proposed for these four units in our proposed rule.

On May 1, 2015, we published a notice in the **Federal Register** announcing supplemental modeling that we conducted for Independence Units 1 and 2, and extending the comment period to allow interested persons additional time to provide comments on the supplemental modeling.[23] We performed the supplemental modeling after receiving a letter dated April 13, 2015, that revealed that we made an error in the modeled location of the Entergy Independence facility.[24] The supplemental modeling included the corrected facility location. We provided a summary of our supplemental modeling for Independence Units 1 and 2 in the docket for our proposed rulemaking.[25] In the summary, we provided a comparison of our previous CALPUFF modeling for Independence Units 1 and 2 (*i.e.,* the modeling that was presented in our proposed rule published on April 8, 2015) and our supplemental modeling. We noted that the modeled visibility benefits from our proposed SO_2 controls (dry FGD) for Independence were the same or larger in the supplemental modeling. The largest difference was an increase of 0.29 dv in the modeled visibility benefit from SO_2 controls at Upper Buffalo. The largest modeled benefit from NO_X controls was at Caney Creek and was approximately the same in the supplemental modeling. Modeled visibility benefits from NO_X controls at the three other Class I areas were slightly smaller in the supplemental modeling. The change in location of the modeled facility resulted in different transport patterns from the facility to the Class I areas, which resulted in the modeled 98th percentile visibility impacts being more driven by sulfate impacts. Therefore, the benefits from NO_X controls on the 98th percentile days were slightly reduced. In addition, whereas our previous modeling of the control scenario that included both dry FGD and LNB/SOFA controls showed visibility benefits ranging from 1.18 to 1.48 dv at each Class I area, the supplemental modeling showed larger visibility benefits ranging from 1.40 to 1.52 dv at each Class I area. After reviewing the supplemental modeling, we did not change our proposed reasonable progress controls for Independence Units 1 and 2.

Proposed Reasonable Progress Goals: We proposed RPGs for Caney Creek and Upper Buffalo that reflected the anticipated visibility conditions resulting from the combination of control measures from the approved portion of the 2008 Arkansas Regional Haze SIP and our FIP proposal. As explained more fully in our proposal, we adjusted the 2018 RPGs modeled by CENRAP using a scaling methodology that adjusted visibility extinction components in proportion to emission changes. We recognized that this method was not refined, but explained that it allowed us to incorporate the additional emission reductions achieved through the FIP into the states' RPGs. Based on this methodology, we proposed revised RPGs for the first planning period for the 20% worst days of 22.27 dv for Caney Creek and 22.33 dv for Upper Buffalo.

Our proposed revised RPGs and our methodology for calculating the revised RPGs were discussed in detail in our FIP proposal and in our technical support documentation,[26] which was made available in the docket when the proposed rule was published on April 8, 2015. However, a spreadsheet containing the actual calculations of our proposed revised RPGs for the 20% worst days for the Caney Creek and Upper Buffalo Wilderness Areas was inadvertently omitted from the docket. On April 4, 2016, we published a notice in the **Federal Register** announcing the availability in the docket of the spreadsheet containing the actual calculations of our proposed revised RPGs for the 20% worst days for the Caney Creek and Upper Buffalo Wilderness Areas.[27] The notice also reopened the comment period for our FIP proposal until May 4, 2016, but strictly limited the reopening of the comment period to our calculations of the revised RPGs, as presented in the spreadsheet we made available at that time in the docket.[28]

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[21] See Arkansas Regional Haze SIP, Appendix 8.1—"Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," sections 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[22] See Arkansas Regional Haze SIP, Appendix 8.1—"Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," section 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[23] 80 FR 24872.

[24] April 13, 2015 letter from Mr. Bill Bumpers to Mr. Guy Donaldson, Chief, Air Planning Section, EPA Region 6, "Entergy Arkansas Inc. (EAI) request for extension of comment period on EPA–R06–OAR–2015–0189–0001." This document is found in the docket for this rulemaking.

[25] See document titled "Summary of Additional Modeling for Entergy Independence," dated April 20, 2015. This document is found in the docket for this rulemaking.

[26] See "Technical Support Document for EPA's Proposed Action on the Arkansas Regional Haze Federal Implementation Plan" at page 147.

Long-Term Strategy: We proposed to find that provisions in the approved portion of the Arkansas Regional Haze SIP and our FIP proposal fulfilled the requirements of 40 CFR 51.308(d)(3), which requires emission limitations, compliance schedules, monitoring and recordkeeping requirements, and various supporting documentation and analyses to ensure that the SIP or FIP will provide reasonable progress toward the national goal. Specifically, we proposed to promulgate emission limits, compliance schedules, and other requirements for Arkansas' BART sources and the two units at the Independence facility to address the long-term strategy requirement.

B. Interstate Visibility Transport

Among other things, CAA section 110(a)(2)(D)(i)(II) requires that all SIPs contain adequate provisions to prohibit emissions that will interfere with measures required to protect visibility in other states. We refer to this as the interstate transport visibility requirement. Our proposed FIP included emission limits for Arkansas sources under the BART and reasonable progress requirements that would ensure a level of emissions reductions at least as great as what surrounding states relied on in developing their regional haze SIPs. We proposed that the combination of the measures in the approved portions of the Arkansas Regional Haze SIP and our FIP proposal would satisfy the visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

IV. Summary of Our Final FIP

Below, we present a summary of our final Arkansas Regional Haze FIP. In this section, we provide a summary of our final BART determinations, reasonable progress determinations, revised RPGs, LTS provisions, and interstate transport provisions. This final FIP includes emission limits, compliance schedules, and requirements for equipment maintenance, monitoring, testing, recordkeeping, and reporting for all affected sources and units.

We note that we are finalizing our FIP with certain changes to our proposal in response to comments we received during the public comment period. In particular, we are finalizing a bifurcated NO_X BART emission limit for White Bluff Units 1 and 2; we are finalizing an SO_2 BART emission limit for the Domtar Ashdown Mill Power Boiler No. 1 in the form of lb/day based on a 30 boiler-operating-day average instead of lb/hr based on a 30 boiler-operating-day average; and we are finalizing an SO_2 BART emission limit for the Domtar Ashdown Mill Power Boiler No. 2 in the form of lb/hr based on a 30 boiler-operating-day average instead of lb/MMBtu based on a 30 boiler-operating-day average. In light of information we received during the public comment period, we are also adjusting the compliance dates for some of our BART determinations. We are requiring AEP Flint Creek Unit 1 to comply with the SO_2 BART emission limit within 18 months of the effective date of this final action, instead of the 5-year compliance date we proposed. We are requiring AEP Flint Creek Unit 1 and White Bluff Units 1 and 2 to comply with the NO_X BART emission limit within 18 months of the effective date of this final action, instead of the 3-year compliance date we proposed. We are requiring the Domtar Ashdown Mill to comply with the SO_2 and NO_X BART emission limits for Power Boiler No. 1 and the PM BART emission limit for Power Boiler No. 2 within 30 days from the effective date of this final action instead of on the date of the final action. We are requiring the Domtar Ashdown Mill to comply with the SO_2 and NO_X BART emission limits for Power Boiler No. 2 within 5 years of the effective date of this final action, instead of the 3-year compliance date we proposed. We are making some adjustments to the requirements for demonstrating compliance, testing, reporting, and recordkeeping for SO_2 and NO_X BART for the Domtar Ashdown Mill Power Boiler No. 1 and for SO_2, NO_X, and PM BART for Power Boiler No. 2. We are also revising the definition of boiler-operating-day as it applies to Power Boilers No. 1 and 2 under this FIP.

We are finalizing SO_2 and NO_X controls under reasonable progress for Independence Units 1 and 2 (our proposed Option 1). In response to comments we received during the public comment period, we are finalizing a bifurcated NO_X emission limit for Independence Units 1 and 2 and are requiring the source to comply with the NO_X emission limit within 18 months of the effective date of this final action instead of the 3-year compliance date we proposed. We are also providing revised RPGs for Arkansas' Class I areas that reflect anticipated visibility conditions at the end of the implementation period in 2018 rather than the anticipated visibility conditions once the FIP has been fully implemented.

These changes to our proposal are discussed in more detail in the subsections that follow and in our separate Response to Comment (RTC) document, which can be found in the docket for this final rulemaking. The final regulatory language for the FIP is under Part 52 at the end of this notice.

The final FIP requires that subject-to-BART sources comply with the emission limits contained in Table 1 below and that the Independence Plant comply with the emission limits contained in Table 2 below. We are determining that the BART emission limits for the sources listed in Table 1 are also sufficient for reasonable progress. Throughout this section of the final rule, we specify the averaging basis of each emission limit and associated compliance dates.

TABLE 1—FINAL BART EMISSION LIMITS

Unit	Final SO_2 emission limit	Final NO_X emission limit	Final PM emission limit
Bailey Unit 1	0.5% limit on sulfur content of fuel combusted.	887 lb/hr[a]	0.5% limit on sulfur content of fuel combusted.
McClellan Unit 1	0.5% limit on sulfur content of fuel combusted.	869.1 lb/hr[b]/705.8 lb/hr[b]	0.5% limit on sulfur content of fuel combusted.

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[27] 81 FR 19097.

[28] See the document titled "Caney Creek and Upper Buffalo Wilderness Areas Reasonable Progress Goals (CACR UPBU RPG analysis.xlsx)," which is available in the docket for our rulemaking.

TABLE 1—FINAL BART EMISSION LIMITS—Continued

Unit	Final SO_2 emission limit	Final NO_X emission limit	Final PM emission limit
Flint Creek Unit 1	0.06 lb/MMBtu	0.23 lb/MMBtu	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
White Bluff Unit 1	0.06 lb/MMBtu	0.15 lb/MMBtu [c]/671 lb/hr [d]	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
White Bluff Unit 2	0.06 lb/MMBtu	0.15 lb/MMBtu [c]/671 lb/hr [d]	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
White Bluff Auxiliary Boiler	105.2 lb/hr [a]	32.2 lb/hr [a]	4.5 lb/hr [a].
Lake Catherine Unit 4 [e]	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).	0.22 lb/MMBtu	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
Domtar Ashdown Mill Power Boiler No. 1.	504 lb/day [f]	207.4 lb/hr [f]	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
Domtar Ashdown Mill Power Boiler No. 2.	91.5 lb/hr	345 lb/hr	PM BART shall be satisfied by relying on the applicable PM standard under 40 CFR part 63, subpart DDDDD [g].

[a] Existing emission limit; we do not anticipate that the facility will have to install any additional control to comply with this emission limit.

[b] Existing emission limit; we do not anticipate that the facility will have to install any additional control to comply with this emission limit. Emission limit of 869.1 lb/hr applies to the natural gas-firing scenario; emission limit of 705.8 lb/hr applies to the fuel oil-firing scenario.

[c] Emission limit of 0.15 lb/MMBtu applies when unit is operated at 50% or greater of the unit's maximum heat input rating.

[d] Emission limit of 671 lb/hr applies when the unit is operated at less than 50% of the unit's maximum heat input rating.

[e] Emission limit for NO_X applies to the natural gas-firing scenario. The unit shall not burn fuel oil until BART determinations for SO_2, NO_X, and PM are promulgated for the unit for the fuel oil-firing scenario through EPA approval of a SIP revision or a FIP.

[f] Emission limit is representative of baseline emissions; we do not anticipate that the facility will have to install any additional control to comply with this emission limit.

[g] The facility shall rely on the applicable PM standard under 40 CFR part 63, subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, as revised, to satisfy the PM BART requirement.

TABLE 2—FINAL REASONABLE PROGRESS EMISSION LIMITS FOR SOURCES NOT SUBJECT TO BART

Unit	Final SO_2 emission limit	Final NO_X emission limit
Independence Unit 1	0.06 lb/MMBtu	0.15 lb/MMBtu [a]/671 lb/hr [b].
Independence Unit 2	0.06 lb/MMBtu	0.15 lb/MMBtu [a]/671 lb/hr [b].

[a] Emission limit of 0.15 lb/MMBtu applies when unit is operated at 50% or greater of the unit's maximum heat input rating.

[b] Emission limit of 671 lb/hr applies when the unit is operated at less than 50% of the unit's maximum heat input rating.

A. Regional Haze

1. Identification of BART-Eligible and Subject-to-BART Sources

We are finalizing our determination that the Georgia-Pacific Crossett Mill 6A Boiler is a BART-eligible source, but is not subject to BART. We are also finalizing our determination that the 9A Boiler, which the State had previously determined is BART-eligible, is not subject to BART. These determinations are based on the company's newly provided analysis and documentation, as described above and in our proposal. Therefore, the CAA and Regional Haze Rule do not require BART determinations for the 6A and 9A Boilers.

2. BART Determinations

a. AECC Bailey Unit 1

Bailey Unit 1 burns primarily natural gas, but is also permitted to burn fuel oil. Our proposal explains why the source needs to retain the flexibility to use fuel oil. Taking into consideration the BART factors, we are finalizing BART determinations and emission limits for SO_2, NO_X, and PM as proposed. Our final BART determination for SO_2 and PM is the use of fuels with 0.5% or lower sulfur content by weight. After the effective date of this final rule, the facility shall not purchase fuel for use in Unit 1 that does not meet this sulfur-content requirement. We are allowing the facility 5 years to burn its existing supply of No. 6 fuel oil in accordance with any operating restrictions enforced by ADEQ. Providing this time period will avoid creating an incentive for the source to burn large amounts of this fuel during a short period, which could affect visibility on individual days more adversely. We are requiring the facility to comply with the requirement to use only fuels with 0.5% or lower sulfur content by weight no later than 5 years from the effective date of this final rule. We discussed in detail in our proposal the cost effectiveness and projected visibility improvement of switching from the baseline fuel to fuels with a sulfur content by weight of 0.5% or lower, and also present this information in Tables 3 and 4.[29] We are not making changes to the analysis we presented in our proposal of the cost and visibility improvement of this control measure. As discussed in our proposal, the cost of switching from the baseline fuel to fuels with a sulfur content by weight of 0.5% or lower is within the range of what we consider to be cost effective for BART and it is projected to result in considerable visibility improvement at the affected Class I areas.[30] We are finalizing this BART determination for SO_2 and PM as proposed.

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[29] See also 80 FR 18944, 18951, and 18955.

[30] 80 FR 18944, 18952, 18956.

TABLE 3—AECC BAILEY UNIT 1—COST EFFECTIVENESS OF SWITCHING TO FUEL WITH SULFUR CONTENT OF 0.5% OR LOWER

Pollutant	No. 6 Fuel oil—0.5% sulfur content ($/ton)
SO_2	2,559
PM	2,997

TABLE 4—AECC BAILEY UNIT 1—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF SWITCHING TO FUEL WITH SULFUR CONTENT OF 0.5% OR LOWER

Class I area	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)—reflects improvement from SO_2 and PM reductions
		No. 6 Fuel oil—0.5% sulfur content
Caney Creek	0.330	0.188
Upper Buffalo	0.348	0.221
Hercules-Glades	0.368	0.233
Mingo	0.379	0.209
Cumulative Visibility Improvement (Δdv)		0.851

Our final BART determination for NO_X is an emission limit of 887 lb/hr, which is the existing emission limit and does not necessitate the installation of additional controls. The source must comply with the NO_X emission limit for BART purposes as of the effective date of this final rule.

b. AECC McClellan Unit 1

AECC McClellan Unit 1 burns primarily natural gas, but is also permitted to burn fuel oil. Our proposal explains why the source needs to retain the flexibility to use fuel oil. Taking into consideration the BART factors, we are finalizing BART determinations and emission limits for SO_2, NO_X, and PM as proposed. Our final BART determination for SO_2 and PM is the use of fuels with 0.5% or lower sulfur content by weight. After the effective date of this final rule, the facility shall not purchase fuel for use in Unit 1 that does not meet this sulfur content requirement. We are allowing the facility 5 years to burn its existing supply of No. 6 fuel oil, in accordance with any operating restrictions enforced by ADEQ. We are requiring the facility to comply with the requirement to use only fuels with 0.5% or lower sulfur content by weight no later than 5 years from the effective date of this final rule. Providing this time period will avoid creating an incentive for the source to burn large amounts of this fuel during a short period, which could affect visibility on individual days more adversely. We discussed in detail in our proposal the cost effectiveness and projected visibility improvement of switching from the baseline fuel to fuels with a sulfur content by weight of 0.5% or lower, and also present this information in Tables 5 and 6.[31] We are not making changes to the analysis we presented in our proposal of the cost and visibility improvement of this control measure. As discussed in our proposal, the cost of switching from the baseline fuel to fuels with a sulfur content by weight of 0.5% or lower is within the range of what we consider to be cost effective for BART and it is projected to result in considerable visibility improvement at the affected Class I areas.[32] We are finalizing this BART determination for SO_2 and PM as proposed.

TABLE 5—AECC MCCLELLAN UNIT 1—COST EFFECTIVENESS OF SWITCHING TO FUEL WITH SULFUR CONTENT OF 0.5% OR LOWER

Pollutant	No. 6 Fuel oil—0.5% sulfur content ($/ton)
SO_2	3,823
PM	4,553

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[31] See also 80 FR 18944, 18958, 18959, and 18962.

[32] 80 FR 18944, 18959, 18962.

TABLE 6—AECC MCCLELLAN UNIT 1—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF SWITCHING TO FUEL WITH SULFUR CONTENT OF 0.5% OR LOWER

Class I area	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)—reflects improvement from SO_2 and PM reductions
		No. 6 Fuel oil—0.5% sulfur content
Caney Creek	0.622	0.3
Upper Buffalo	0.266	0.12
Hercules-Glades	0.231	0.116
Mingo	0.228	0.092
Cumulative Visibility Improvement (Δdv)		0.628

Our final BART determination for NO_X is an emission limit of 869.1 lb/hr for natural gas firing and 705.8 lb/hr for fuel oil firing, which are the existing emission limits and do not necessitate the installation of additional controls. The source must comply with the NO_X emission limits for BART purposes as of the effective date of the final rule.

c. AEP Flint Creek Unit 1

Taking into consideration the BART factors, we are finalizing our determination that BART for SO_2 is an emission limit of 0.06 lb/MMBtu on a 30 boiler-operating-day rolling average, which is consistent with the installation and operation of NID technology (a type of dry scrubbing system). As discussed in detail in our RTC document, we are not making changes to the analysis we presented in our proposal of the cost and visibility improvement of this control measure. We discussed in our proposal that the cost of NID on Flint Creek Unit 1 is estimated to be $3,845/$SO_2$ ton removed, which is within the range of what we consider to be cost effective for BART, and it is projected to result in considerable visibility improvement at the affected Class I areas (see Table 7).[33] Therefore, we are finalizing this SO_2 BART emission limit as proposed.

TABLE 7—AEP FLINT CREEK UNIT 1—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF NID TECHNOLOGY

Class I area	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Caney Creek	0.963	0.615
Upper Buffalo	0.965	0.464
Hercules-Glades	0.657	0.345
Mingo	0.631	0.414
Cumulative Visibility Improvement (Δdv)		1.838

In our proposal, we stated that we believed that the maximum compliance time of 5 years allowed under the CAA and Regional Haze Rule was appropriate for a new scrubber retrofit and proposed to require the source to comply with this emission limit no later than 5 years from the effective date of the final rule.[34] We received comments during the public comment period that brought to our attention that the Arkansas Public Service Commission (PSC) has determined that dry scrubber installation at Flint Creek is in the public interest and that the installation of NID controls is already underway and anticipated by the company to be completed by May 29, 2016. The Arkansas PSC requires Flint Creek to provide quarterly reports on the progress of the installation of these controls, which are publicly available online on the Arkansas PSC Web site.[35] The first quarterly report submitted by the company to the Arkansas PSC is dated March 26, 2014, and stated that the FGD project includes the installation of an Alstom NID system to comply with the Mercury and Air Toxics Standards (MATS) Rule and in anticipation of the BART requirements. The report also stated that the company established design, procurement, and construction schedules to bring the upgraded plant fully on line by May 29, 2016. The most recent quarterly report available on the Arkansas PSC Web site is dated March 10, 2016, and covers the fourth quarter in 2015. This report indicated that the company still expected that the upgraded plant would be fully on line by May 29, 2016. We verified the status of the installation of the controls with the company, who confirmed that installation of the NID controls was completed in June 2016, and that the plant is now operating with those controls.[36] We proposed a 5-year compliance date without knowing that installation of these controls was well underway. After carefully considering the comments we received, we have determined that a 5-year compliance date is not appropriate because the CAA requires that sources comply with BART as expeditiously as practicable.[37] Therefore, we are finalizing a shorter compliance date.[38] The information that has been made available to us during the comment period indicates that Flint Creek intends to operate the NID system to comply with the alternative SO_2 emission limit under the Utility MATS rule. The applicable MATS SO_2 emission limit is 0.2 lb/MMBtu. The SO_2 emission limit we are requiring in our FIP to satisfy the SO_2 BART requirement is 0.06 lb/MMBtu. The comments and documentation submitted to us indicate that the company intends to use the same NID system to comply with MATS and the SO_2 BART requirement. We expect that in order to achieve an emission rate of 0.06 lb/MMBtu, additional scrubbing reagent would be needed beyond that required to meet the 0.2 lb/MMBtu emission limit the company was required to meet by April 2016 under MATS. We also recognize that it is possible that the reagent handling system installed to meet the 0.2 lb/MMBtu emission limit would need some upgrades in order to accommodate the additional scrubbing reagent that would be needed to achieve the more stringent 0.06 lb/MMBtu emission limit we are requiring in this FIP. Therefore, to allow the facility sufficient time to secure the additional scrubbing reagent that would be needed to comply with the SO_2 BART emission limit and to make any necessary upgrades to the reagent handling system, we are finalizing an 18-month compliance date for Flint Creek Unit 1 to comply with the SO_2 BART requirement. We believe that this will provide sufficient time for the facility to be able to achieve the SO_2 BART requirement while still meeting the statutory mandate that BART controls be installed and operated as expeditiously as practicable.

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[33] 80 FR 18944, 18966.

[34] 80 FR 18944, 18967.

[35] See the Arkansas PSC Web site at *http://www.apscservices.info/efilings/docket_search.asp.* The quarterly reports the company is required to submit to the Arkansas PSC are available by searching for docket No. 12–008–U.

[36] See file titled "Record of Call—Flint Creek_ August 10 2016," which is found in the docket for this rulemaking.

Taking into consideration the BART factors, we are finalizing our determination that BART for NO_X is an emission limit of 0.23 lb/MMBtu on a 30 boiler-operating-day rolling average, which is consistent with the installation and operation of new LNB/OFA. In response to comments we received on our initial cost analysis presented in our proposal, we have revised our cost estimate for LNB/OFA for AEP Flint Creek Unit 1. Based on this revision to our cost analysis, we find that LNB/OFA is estimated to cost $1,258/$NO_X$ ton removed, which is even more cost effective (lower $/ton) than we estimated in our proposal. LNB/OFA is also projected to result in considerable visibility improvement at the affected Class I areas (see Table 8). As we discuss in our RTC document, after revising our cost analysis of NO_X controls for AEP Flint Creek, we find that the additional cost of more stringent controls such as SNCR and SCR is not justified by the incremental visibility benefits of the more stringent controls. Therefore, we are finalizing the NO_X BART emission limit as proposed, consistent with installation of LNB/OFA controls.

TABLE 8—AEP FLINT CREEK UNIT 1—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF LNB/OFA

Class I area	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Caney Creek	0.963	0.081
Upper Buffalo	0.965	0.026
Hercules-Glades	0.657	0.024
Mingo	0.631	0.014
Cumulative Visibility Improvement (Δdv)	....	0.145

We received comments from the company requesting that we extend our proposed 3-year compliance date for the NO_X BART requirement to 5 years to allow sufficient time for planning, selection of engineering and design professionals, vendors, contractors, permitting, start up and commissioning, and coordinating and scheduling unit outages. We also received comments from an environmental group stating that we should shorten the compliance date because the typical installation timeframe for low NO_X burners is 6–8 months from bid evaluation through startup of the technology. The environmental group also indicated that the company may have already started the process of installing LNB/OFA controls in anticipation of the BART requirement. We do not have information corroborating that the installation of these controls is already underway, but we agree with the environmental group that LNB/OFA can be installed within a 6–8 month timeframe. The company did not provide specific information to support its contention that a longer compliance date that extends beyond the 6–8 month typical installation timeframe for LNB/OFA, measured from bid evaluation, is needed for AEP Flint Creek. Although we agree that 6–8 months is the typical installation timeframe for LNB/OFA controls, in determining the appropriate compliance date we have also taken into consideration that we are finalizing NO_X emission limits that are based on LNB/OFA or LNB/SOFA controls for a total of five EGUs in this FIP and that the installation of these controls will require outage time. These five EGUs combined accounted for approximately 45% of the state's 2015 heat input.[39] Because of the heavy reliance on these EGUs for electricity generation in the state, we recognize that it may be difficult to schedule outage time to install LNB/OFA or LNB/SOFA on all five of these units within the typical installation timeframe of 6–8 months and at the same time supply adequate electricity to meet demand in the state. As we discuss in section V.F. of this final rule, in light of these unique circumstances, we believe that it is appropriate to finalize an 18-month compliance date for these EGUs to comply with the NO_X emission limits required by this FIP. This compliance date provides the affected utilities considerable time beyond typical LNB/

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[37] CAA section 169A(b)(2)(A).

[38] The shorter compliance timeframe we are finalizing is a logical outgrowth of our proposal based on the comments received, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union, UMW,* 407 F.3d at 1259; *Fertilizer Inst.,* 935 F.2d at 1311; *Chocolate Mfrs. Ass'n,* 755 F.2d 1098.

[39] These five EGUs are White Bluff Units 1 and 2, Independence Units 1 and 2, and Flint Creek Unit 1.

OFA installation timeframes to install these controls and comply with their NO_X emission limits.

Several commenters submitted comments stating that Arkansas is subject to the Cross State Air Pollution Rule (CSAPR) for ozone season NO_X, so we should rely on CSAPR to satisfy the NO_X BART requirement instead of promulgating source-specific NO_X BART determinations. In the same way that a state subject to CSAPR for ozone season NO_X has the discretion to decide whether to conduct source-specific BART determinations for NO_X or to rely on EPA's 2012 finding that CSAPR is better than BART, EPA has the same discretion in promulgating a FIP. Our decision to propose source-specific NO_X BART determinations for Arkansas was reasonable for multiple reasons: It is the approach Congress chose in the statute itself; it is consistent with Arkansas' earlier decision to conduct source-specific BART determinations in lieu of relying on the Clean Air Interstate Rule (CAIR) to meet the BART requirements; and at the time of our proposed action, it properly accounted for uncertainty in the CSAPR better-than-BART regulation created by ongoing litigation regarding the CSAPR program. Further, subsequent to our proposal, the D.C Circuit Court issued a July 2015 decision upholding CSAPR but remanding without vacatur a number of the Rule's state NO_X and SO_2 emissions budgets. Arkansas' ozone season NO_X budget is not itself affected by the remand. However, the Court's remand of the affected states' emissions budgets has implications for CSAPR better-than BART, since the demonstration underlying that rulemaking relied on the emission budgets of all states subject to CSAPR, including those that the D.C. Circuit remanded, to establish that CSAPR provides for greater reasonable progress than BART. As of the time EPA is taking this action to finalize Arkansas' Regional Haze FIP, we are in the process of acting on the Court's remand consistent with the planned response we outlined in a June 2016 memorandum.[40] For these reasons, which we discuss in more detail in our RTC document, we are finalizing source-specific NO_X BART determinations for AEP Flint Creek Unit 1 and other Arkansas EGUs subject to BART. As we have noted throughout this document, we are willing to work with ADEQ to develop a SIP revision that could replace our FIP. Such a SIP revision will need to meet the CAA and EPA's Regional Haze regulations. In its SIP revision, ADEQ may elect to rely on CSAPR to satisfy the NO_X BART requirements for Arkansas' EGUs instead of doing source-specific NO_X BART determinations. Such an approach could be appropriate if, as we expect, the uncertainty created by the D.C. Circuit's remand of the affected states' emission budgets will shortly be resolved.

d. White Bluff Units 1 and 2

Taking into consideration the BART factors, we are finalizing our determination that BART for SO_2 for White Bluff Units 1 and 2 is an emission limit of 0.06 lb/MMBtu on a 30 boiler-operating-day rolling average, consistent with the installation and operation of dry FGD or another control technology that achieves that level of control. We are requiring the source to comply with this emission limit no later than 5 years from the effective date of the final rule. In response to comments we received on our initial cost analysis presented in our proposal, we have revised our cost estimate for dry FGD for White Bluff Units 1 and 2. Based on this revision to our cost analysis, we find that dry FGD is estimated to cost \$2,565/SO_2 ton removed at Unit 1 and \$2,421/SO_2 ton removed at Unit 2. Although these cost estimates are slightly higher than we estimated in our proposal, we continue to find these controls to be cost effective and would result in considerable visibility improvement (see Table 9).[41] Therefore, we are finalizing the SO_2 BART emission limit as proposed.

TABLE 9—ENTERGY WHITE BLUFF UNITS 1 AND 2—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF DRY FGD

Class I area	White Bluff Unit 1		White Bluff Unit 2	
	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Caney Creek	1.628	0.813	1.695	0.754
Upper Buffalo	1.140	0.762	1.185	0.767
Hercules-Glades	1.041	0.683	1.061	0.645
Mingo	0.887	0.620	0.903	0.593
Cumulative Visibility Improvement (Δdv)	....	2.878	....	2.759

Several commenters requested that we rely on CSAPR to satisfy the NO_X BART requirement for Arkansas EGUs in our final FIP. We discuss in section V.H. of this final rule that we have concluded for a number of reasons that it would not be appropriate to rely on CSAPR as an alternative to NO_X BART for EGUs in Arkansas at this time. Therefore, we are finalizing source-specific NO_X BART determinations for all Arkansas EGUs, including White Bluff Units 1 and 2. We proposed that BART for NO_X for Units 1 and 2 is an emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, consistent with the installation and operation of LNB/SOFA. We received comments from the company stating that White Bluff Units 1 and 2 are no longer expected to be able to consistently meet our proposed NO_X emission limit of 0.15 lb/MMBtu over a 30-boiler-operating-day period based on LNB/SOFA controls. We have determined that the company has provided sufficient information to substantiate that the units are not expected to be able to meet our proposed NO_X emission limit of 0.15 lb/MMBtu when the units are primarily operated at less than 50% of their operating capacity. In particular, LNB/SOFA is expected to achieve optimal NO_X control when the boiler is operated from 50–100% steam flow because the heat input across this range is sufficient to safely redirect a substantial portion of combustion air through the overfire air registers. This allows the combustion zone airflow to be sub-stoichiometric and oxygen to be reduced to the point where much of the elemental nitrogen in the fuel and combustion air can pass through the boiler without converting to NO_X. When a boiler is operated below the 50–100% capacity range, NO_X concentrations on a lb/MMBtu basis can be elevated due to the lower heat input rating, even though the pounds of NO_X emitted per hour are less due to the reduced amount of fuel and air. In light of the information provided by the company, we are finalizing a bifurcated NO_X emission limit for each unit, where our proposed 0.15 lb/MMBtu emission limit will address emissions when the unit is operated at high capacities and a mass-based emission limit will address emissions when the unit is operated at low capacities. The bifurcated emission limits we are finalizing are a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document.[42]

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[40] *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_SO₂_Remand_Memo.pdf.*

[41] See also 80 FR 18944, 18972.

We are requiring White Bluff Units 1 and 2 to each meet a NO_X emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, where the average is to be calculated by including only the hours during which the unit was dispatched at 50% or greater of maximum capacity. In this particular case, the 30 boiler-operating-day rolling average is to be calculated for each unit by the following procedure: (1) Summing the total pounds of NO_X emitted during the current boiler-operating day and the preceding 29 boiler-operating days, including only emissions during hours when the unit was dispatched at 50% or greater of maximum capacity; (2) summing the total heat input in MMBtu to the unit during the current boiler-operating day and the preceding 29 boiler-operating days, including only the heat input during hours when the unit was dispatched at 50% or greater of maximum capacity; and (3) dividing the total pounds of NO_X emitted as calculated in step 1 by the total heat input to the unit as calculated in step 2.

In addition to the 0.15 lb/MMBtu emission limit that is intended to control NO_X emissions when the units are operated at 50% or greater of maximum capacity, we are establishing a limit in lb/hr that applies when the units are operated at lower capacity. The company suggested an emission limit of 1,342.5 lb/hr on a 30 boiler-operating-day rolling average applicable at all times regardless of the capacity at which the unit is operated. Based on the information available to us, we find that an emission limit of 1,342.5 lb/hr is too high to appropriately control NO_X emissions when the units are operated at low capacities. It appears that the company calculated the emission limit by multiplying the 0.15 lb/MMBtu limit by the maximum heat input rating for each unit (8,950 MMBtu/hr), which yielded 1,342.5 lb/hr. We find that an emission limit of 1,342.5 lb/hr would be appropriate when the unit is operated at high capacities considering that the limit was calculated based on the unit's maximum heat input rating. However, such an emission limit would not be sufficiently protective or appropriate when the unit is operated at lower capacities since the mass of NO_X emitted is expected to be lower compared to operation at high capacity.

To address this concern, we calculated a new emission limit of 671 lb/hr that is based on 50% of the unit's maximum heat input rating, and is applicable only when the unit is being operated at less than 50% of maximum heat input rating. We calculated this limit by multiplying 0.15 lb/MMBtu by 50% of the maximum heat input rating for each unit (*i.e.*, 50% of 8,950 MMBtu/hr, or 4,475 MMBtu/hr). This emission limit is on a rolling 3-hour average, where the average is to be calculated by including emissions only for the hours during which the unit was dispatched at less than 50% of maximum capacity (*i.e.*, hours when the heat input to the unit is less than 4,475 MMBtu). We are not establishing a lb/hr emission limit that applies when the units are operated at 50% or greater of maximum heat input rating because the 0.15 lb/MMBtu emission limit will address NO_X emission during those operating conditions. We discussed in our proposal that the cost of LNB/SOFA on White Bluff Units 1 and 2 is estimated to be \$350/NO_X ton removed for Unit 1 and \$340/NO_X ton removed for Unit 2,[43] which we consider to be very cost effective, and it would also result in considerable visibility improvement at the affected Class I areas (see Table 10).[44] Therefore, we are finalizing the NO_X BART emission limits as described above.

As discussed in section V.F. of this final rule, in response to comments we received, we are shortening the compliance date for the NO_X BART requirement for White Bluff Units 1 and 2 from our proposed 3 years to 18 months.

TABLE 10—ENTERGY WHITE BLUFF UNITS 1 AND 2—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF LNB/SOFA

Class I area	White Bluff Unit 1		White Bluff Unit 2	
	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Caney Creek	1.628	0.166	1.695	0.225
Upper Buffalo	1.140	0.101	1.185	0.139

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[42] A final rule is a logical outgrowth of the proposed rule "if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." *Int'l Union,UMW* v. *MSHA,* 407 F.3d 1250, 1259 (D.C. Cir. 2005) (internal quotations omitted); *see also, Fertilizer Inst.* v. *EPA,* 935 F.2d 1303, 1311 (D.C. Cir. 1991). No additional notice or opportunity to comment is necessary where, as here, the final rule is "in character with the original scheme," and does not "substantially depart [] from the terms or substance" of the proposal. *Chocolate Mfrs. Ass'n* v. *Block,* 755 F.2d 1098 (4th Cir. 1985).

[43] Our cost analysis and visibility modeling analysis for LNB/SOFA for White Bluff Units 1 and 2, as presented in our proposal, is based on an emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average. As discussed in this final action, we received new information from Entergy that indicates that the source expects to be operating at less than 50% load more frequently and therefore no longer expects to be able to meet our proposed NO_X emission limit. We are therefore finalizing the bifurcated NO_X emission limit described in this final action. We recognize that the comments submitted by Entergy indicate that some of the assumptions used to calculate the cost effectiveness of NO_X controls for White Bluff may not exactly apply to future operations. However, because we found LNB/SOFA controls to be very cost effective, we expect that even if the change in operation of the source were known more precisely and were taken into account in our calculation of the cost (\$/ton), these controls would continue to be cost effective. Therefore, we are not revising our cost effectiveness calculations or visibility improvement modeling of LNB/SOFA for White Bluff Units 1 and 2.

[44] 80 FR at 18972.

TABLE 10—ENTERGY WHITE BLUFF UNITS 1 AND 2—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF LNB/SOFA—Continued

Class I area	White Bluff Unit 1		White Bluff Unit 2	
	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Hercules-Glades	1.041	0.176	1.060	0.190
Mingo	0.887	0.038	0.903	0.047
Cumulative Visibility Improvement (Δdv)		0.481		0.601

In our proposal, we also solicited public comment on any alternative SO_2 and NO_X control measures that could address the regional haze requirements for Entergy White Bluff Units 1 and 2 and Entergy Independence Units 1 and 2 for this planning period. We received comments from the company during the public comment period that proposed one alternative strategy,[45] but we determined that this alternative strategy would not adequately address the BART and reasonable progress requirements for the affected units. We discuss this issue in more detail elsewhere in this final rule and in our RTC document.

e. White Bluff Auxiliary Boiler

We are finalizing our determination that the existing emission limit of 105.2 lb/hr is BART for SO_2, the existing emission limit of 32.2 lb/hr is BART for NO_X, and the existing emission limit of 4.5 lb/hr is BART for PM for the Auxiliary Boiler. We do not expect these emission limits to require the installation of additional controls. We are requiring the White Bluff Auxiliary Boiler to comply with these emission limits as of the effective date of this final rule.

f. Entergy Lake Catherine Unit 4

Taking into consideration the BART factors, we are finalizing our determination that BART for NO_X for the natural gas-firing scenario is an emission limit of 0.22 lb/MMBtu on a 30 boiler-operating-day rolling average, consistent with the installation and operation of BOOS. As discussed in more detail in our RTC document, we are not making changes to the analysis presented in our proposal of the cost and visibility improvement of this control measure. We discussed in our proposal that the cost of BOOS on Lake Catherine Unit 4 is estimated to be \$138/NO_X ton removed, which we consider to be very cost effective, and it is also projected to result in considerable visibility improvement at the affected Class I areas (see Table 11).[46] Therefore, we are finalizing the NO_X BART emission limit as proposed. We are requiring the source to comply with this emission limit no later than 3 years from the effective date of this final rule.

TABLE 11—ENTERGY LAKE CATHERINE UNIT 4—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF BOOS

Class I area	Baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Caney Creek	1.371	0.596
Upper Buffalo	0.532	0.248
Hercules-Glades	0.387	0.175
Mingo	0.429	0.196
Cumulative Visibility Improvement (Δdv)		1.215

We are also finalizing our determination that Lake Catherine Unit 4 shall not burn any fuel oil unless or until Arkansas submits a SIP revision that contains BART determinations for SO_2, NO_X, and PM for the fuel oil-firing scenario for Unit 4 and we approve these BART determinations into the SIP or we promulgate such BART determinations in a FIP. We are finalizing this determination in light of the fact that Unit 4 has not combusted any fuel oil in over 10 years and the company's commitment to not burn any fuel oil at Unit 4 until Arkansas submits the SIP revision described above.

g. Domtar Ashdown Mill Power Boiler No. 1

In response to comments received from the company, we are finalizing an SO_2 BART emission limit in the form of lb/day instead of lb/hr for Power Boiler No. 1. Specifically, we are finalizing an SO_2 BART emission limit of 504 lb/day averaged over a rolling 30 boiler-operating-day period instead of the proposed emission limit of 21.0 lb/hr averaged over a rolling 30 boiler-operating-day period. According to the company, the calculation of hourly SO_2 emissions using hourly fuel throughput information is not a workable approach for Power Boiler No. 1, where the practice is to use monthly fuel throughput information that is reconciled at the end of each month to determine monthly fuel usage. The company believes an emission limit in terms of lb/day is better suited to the mill's methodology for determining fuel usage at Power Boiler No. 1. We agree with the company and are finalizing an SO_2 BART emission limit of 504 lb/day averaged over a rolling 30 boiler-operating-day period. This emission limit is consistent with the Power Boiler's baseline emissions and would not necessitate additional controls.[47] We are also finalizing our determination that the mill must demonstrate compliance with the SO_2 BART emission limit by using a site-specific curve equation (provided to us by the facility) to calculate SO_2 emissions from Power Boiler No. 1 when combusting bark, and that the mill must confirm the accuracy of the site-specific curve equation using stack testing.[48] Further, we are finalizing our determination that for purposes of demonstrating compliance with the emission limit for BART for SO_2 when combusting fuel oil, the mill shall assume that the SO_2 inlet is equal to the SO_2 being emitted at the stack, where SO_2 inlet is defined to be the SO_2 content of the fuel delivered to the fuel inlet of the combustion chamber.

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[45] As described in section I. of this notice, Entergy also submitted a comment after the close of the comment period, indicating that Entergy intends that a second alternative described in the late comment, involving only White Bluff, is a replacement for the multi-unit alternative previously described in its timely comments. Because the late comment is not a basis for our decision making in this final rule, we are responding in this final rule and in our RTC document to the alternative proposal described in the comments that Entergy filed during the comment period.

[46] 80 FR 18944, 18978.

We are finalizing a NO_X BART emission limit of 207.4 lb/hr for Power Boiler No. 1 as proposed. This emission limit is consistent with the Power Boiler's baseline emissions, and we expect that compliance with this emission limit will not necessitate the installation of additional controls. In response to comments we received from the company, we are revising our proposed method for demonstrating compliance with the NO_X BART emission limit. We proposed that, to demonstrate compliance with the NO_X BART emission limit, the facility must conduct annual stack testing. The company submitted comments stating that it generally agreed that stack testing was an appropriate method for demonstrating compliance, but it disagreed that our proposed frequency of an annual stack testing was appropriate. The company noted that historical NO_X stack test data from 2001–2005 and 2010 for Power Boiler 1 showed the NO_X emissions were fairly consistent. After carefully considering the company's comments, we agree that the results of these previous stack tests demonstrate that an annual stack test is not warranted. Therefore, we are finalizing a requirement that the facility demonstrate compliance with the NO_X BART emission limit for Power Boiler No. 1 by conducting stack testing once every 5 years, beginning no later than 1 year from the effective date of our final action.

In response to comments we received from the company, we are finalizing one alternative method for demonstrating compliance with the SO_2 and NO_X BART emission limits for Power Boiler No. 1. The company submitted comments stating that it may decide in the near future to convert Power Boiler No. 1 to burn only natural gas. After carefully considering the company's comments, we are making the determination that if the company makes the decision to convert Power Boiler No. 1 to burn only pipeline quality natural gas and its preconstruction air permit is revised to reflect that Power Boiler No. 1 is permitted to burn only pipeline quality natural gas, the company will have demonstrated that the boiler is complying with the SO_2 BART emission limit. Once the air permit is revised to reflect that Power Boiler No. 1 is allowed to burn only pipeline quality natural gas, the reporting and recordkeeping requirements associated with our SO_2 BART emission limit would no longer be applicable. We find this alternative method for demonstrating compliance with the SO_2 BART emission limit to be appropriate given that SO_2 emissions due to natural gas combustion are negligible. This alternative method for compliance demonstration will ensure that the facility is not unnecessarily burdened with calculating SO_2 emissions and with recordkeeping and reporting requirements when SO_2 emissions from Power Boiler No. 1 are anticipated to be negligible. We are also making the determination that if the preconstruction air permit is revised to reflect that Power Boiler No. 1 is permitted to burn only pipeline quality natural gas, the facility may demonstrate compliance with the NO_X emission limit by calculating NO_X emissions using AP–42 emission factors and fuel usage records. Under this scenario, the facility would not be required to demonstrate compliance with the NO_X BART emission limit for Power Boiler No. 1 through stack testing. We also note that after the close of the comment period for our proposal, we became aware that Power Boiler No. 1 has already switched to burn only natural gas and that the facility submitted a permit renewal application to ADEQ that will reflect that the power boiler is permitted to burn only natural gas. We believe that the alternative methods for compliance demonstration we are finalizing are appropriate and addresses the mill's concerns.[49]

In response to comments we received from the company, we are revising our definition of "boiler-operating-day" as it applies to Power Boilers Nos. 1 and 2 under this FIP. The company commented that for mill operation purposes, it defines boiler-operating-day as "a 24-hr period between 6 a.m. and 6 a.m. the following day during which any fuel is fed into and/or combusted at any time in the power boiler." After carefully considering the comment, we agree with the company that it is reasonable and appropriate to harmonize our definition of a boiler-operating day with that of the mill to avoid any unnecessary modification or reprogramming of Power Boilers 1 and 2. Therefore, for purposes of BART for Power Boilers No. 1 and 2, we are defining a boiler-operating-day as a 24-hour period between 6 a.m. and 6 a.m. the following day during which any fuel is fed into and/or combusted at any time in the power boiler. The 30-day rolling average for Power Boiler No. 1 shall be determined by adding together the pounds of SO_2 from that boiler-operating-day and the preceding 29 boiler-operating-days and dividing the total pounds of SO_2 by the sum of the total number of boiler operating days (*i.e.*, 30). The result will be the 30 boiler-operating-day rolling average in terms of lb/day emissions of SO_2.[50]

In response to comments we received from the company, we are also revising our proposed compliance dates for SO_2 and NO_X BART for Power Boiler No. 1. The company submitted comments requesting that we finalize a compliance date of 30 days after the effective date of the final rule instead of requiring the source to comply with BART as of the effective date of the final rule. The company noted this would provide additional time for it to prepare compliance records. We determined that the company's request is reasonable and would allow the mill to prepare applicable compliance records and adjust recordkeeping systems without unduly delaying compliance with the BART emission limits. Therefore, we are requiring Power Boiler No. 1 to comply with the SO_2 and NO_X BART emission limits no later than 30 days from the effective date of this final rule.[51]

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[47] The lb/day emission limit we are finalizing is a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union, UMW*, 407 F.3d at 1259; *Fertilizer Inst.*, 935 F.2d at 1311; *Chocolate Mfrs. Ass'n*, 755 F.2d 1098.

[48] The curve equation is $Y = 0.4005 * X - 0.2645$, where Y = pounds of sulfur emitted per ton dry fuel feed to the boiler and X = pounds of sulfur input per ton of dry bark. The purpose of this equation is to factor in the degree of SO_2 scrubbing provided by the combustion of bark.

[49] The alternative methods for demonstrating compliance we are finalizing for Power Boiler No. 1 are a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union,UMW*, 407 F.3d at 1259; *Fertilizer Inst.*, 935 F.2d at 1311; *Chocolate Mfrs. Ass'n*, 755 F.2d 1098.

[50] The revised definition of "boiler operating day" as it applies to these two units is a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union,UMW*, 407 F.3d at 1259; *Fertilizer Inst.* v. *EPA*, 935 F.2d at 1311; *and Chocolate Mfrs. Ass'n*, 755 F.2d 1098.

h. Domtar Ashdown Mill Power Boiler No. 2

In response to comments we received from the company, we are finalizing an emission limit of 91.5 lb/hr based on a 30 boiler-operating-day rolling average instead of 0.11 lb/MMBtu. As discussed in our proposal, Domtar provided monthly average data for 2011, 2012, and 2013 on monitored SO_2 emissions from Power Boiler No. 2, mass of the fuel burned for each fuel type, and the percent sulfur content of each fuel type burned.[52] Based on the information provided by Domtar, we found that the monthly average SO_2 control efficiency of the existing venturi scrubbers for the 2011–2013 period ranged from 57% to 90%. The information provided also indicated that the facility could add more scrubbing solution to achieve greater SO_2 removal than what is currently being achieved. We proposed that it is feasible for the facility to use additional scrubbing solution to consistently achieve at least a 90% SO_2 removal on a monthly average basis. To determine the controlled emission rate that corresponds to the operation of the existing venturi scrubbers at a 90% removal efficiency, we first determined the SO_2 emission rate that corresponds to the operation of the scrubbers at the current average control efficiency (*i.e.,* baseline control efficiency) of approximately 69%. Based on the emissions data provided by Domtar, we determined that Power Boiler No. 2's annual average SO_2 emission rate for the years 2011–2013 was 280.9 lb/hr. This annual average SO_2 emission rate corresponds to the operation of the scrubbers at a 69% removal efficiency. We also estimated that 100% uncontrolled emissions would correspond to an emission rate of approximately 915 lb/hr. Application of a 90% control efficiency to the uncontrolled rate results in a controlled emission rate of 91.5 lb/hr, or 0.11 lb/MMBtu based on the boiler's maximum heat input of 820 MMBtu.[53] We thus proposed that BART for SO_2 for Power Boiler No. 2 is an emission limit of 0.11 lb/MMBtu on a 30 boiler-operating-day rolling average.

During the public comment period, the company submitted comments requesting that we finalize an SO_2 BART emission limit that is on a lb/hr basis instead of lb/MMBtu. The company correctly noted that we used the boiler's maximum heat input rating of 820 MMBtu/hr to determine the proposed emission limit in terms of lb/MMBtu. The company brought to our attention that the use of the maximum heat input rating is not representative of typical boiler operating conditions, which are lower than the maximum heat input capability. We have determined that finalizing an emission limit in terms of lb/hr is appropriate and will address the company's concern.[54] Therefore, we are finalizing an SO_2 emission limit of 91.5 lb/hr on a 30 boiler-operating-day rolling average for Power Boiler No. 2. Because the SO_2 emission limit we are finalizing is based on converting our proposed emission limit of 0.11 lb/MMBtu to an emission limit in the form of lb/hr, we find that our final emission limit is expected to achieve the same level of SO_2 reduction as 0.11 lb/MMBtu, which is what we assumed in our analysis of cost and visibility improvement. Therefore, we are not making changes to the analysis we presented in our proposal of the cost and visibility improvement of this control measure.[55] The use of additional scrubbing reagent with scrubber pump upgrades on the existing venturi scrubbers to meet an emission limit of 91.5 lb/hr is estimated to cost $1,411/$SO_2$ ton removed, and it is projected to result in considerable visibility improvement at the affected Class I areas (see Table 12). Taking into consideration the BART factors, we are finalizing this SO_2 emission limit. In response to comments we received from the company, we are also revising our definition of "boiler-operating-day" as it applies to Power Boilers No. 1 and 2 for BART purposes.

TABLE 12—DOMTAR POWER BOILER NO. 2—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF USING ADDITIONAL SCRUBBING REAGENT/SCRUBBER PUMP UPGRADES

Class I area	Baseline visibility impact (Δdv)	Estimated visibility improvement from baseline (Δdv)
Caney Creek	0.844	0.139
Upper Buffalo	0.146	0.05
Hercules-Glades	0.105	0.048
Mingo	0.065	0.025
Cumulative Visibility Improvement (Δdv)	....	0.262

We also received comments from Domtar expressing uncertainty as to whether our proposed SO_2 emission limit for Power Boiler No. 2 can be met by upgrading the scrubber pumps and using additional scrubbing solution to consistently achieve our proposed SO_2 emission limit. However, we have determined that aside from expressing general uncertainty, Domtar did not provide any information that demonstrates that it is not technically feasible to meet our proposed SO_2 emission limit, which is based on a 30 boiler-operating-day rolling average. We also received comments from Domtar disagreeing with our use of 2011–2013 as the baseline years for calculating our proposed SO_2 emission limit for Power Boiler No. 2. Domtar asked that we instead use 2001–2003 as the baseline period for calculating the SO_2 emission limit, which would result in an emission limit of 155 lb/hr instead of

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[51] The revised compliance date is a logical outgrowth of our proposal based on the company's comments. *See Int'l Union,UMW,* 407 F.3d at 1259; *Fertilizer Inst,* 935 F.2d at 1311; *and Chocolate Mfrs. Ass'n,* 755 F.2d 1098.

[52] 80 FR 18944, 18984.

[53] 80 FR at 18984.

[54] The lb/hr emission limits we are finalizing is a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union,UMW,* 407 F.3d at 1259; *Fertilizer Inst,* 935 F.2d at 1311; *and Chocolate Mfrs. Ass'n,* 755 F.2d 1098.

[55] 80 FR at 18984, 18985.

91.5 lb/hr. Domtar pointed out that in more recent years (after the 2001–2003 period), the mill voluntarily reduced its SO_2 emissions and that using a more recent period to calculate the BART emission limit results in a more stringent emission limit.

As discussed in more detail elsewhere in this final rule and in our RTC document, we disagree that it is appropriate to use 2001–2003 as the baseline period for purposes of calculating the SO_2 BART emission limit for Power Boiler No. 2. One of the factors we are required to take into consideration in making a BART determination is whether there is any existing pollution control equipment in use at the source. Power Boiler No. 2 is currently equipped with venturi scrubbers for control of SO_2 emissions, and in our BART analysis, we evaluated upgrades to the existing scrubbers. As we discussed in our proposal, in determining whether upgrades to the existing scrubbers are technically feasible and whether additional SO_2 control could be achieved, it was necessary for us to first determine the current control efficiency of the scrubbers. For purposes of determining the current control efficiency of the scrubbers, we believe the most reasonable and appropriate approach is to rely on recent data instead of older data from the 2001–2003 period. Therefore, we relied on 2011–2013 monthly average data on monitored SO_2 emissions, records of mass of fuel burned for each fuel type, and the percent sulfur content of each fuel type burned to estimate the current average control efficiency (*i.e.*, baseline control efficiency) of the scrubbers, which we found to be approximately 69%. We find that because the baseline control efficiency of the existing scrubbers (*i.e.*, 69%) corresponds to emissions data from 2011–2013, it is reasonable and appropriate to rely on emissions data from the same period to calculate the emission limit that corresponds to increasing the control efficiency from the baseline level of approximately 69% up to 90%. Therefore, we are not using 2001–2003 as the baseline period for purposes of calculating the SO_2 emission limit for Power Boiler No. 2.

We proposed to require the facility to demonstrate compliance with the SO_2 emission limit for Power Boiler No. 2 using the existing CEMS. We are finalizing this method for demonstrating compliance with the SO_2 BART emission limit for Power Boiler No. 2. During the public comment period for our proposal, Domtar submitted comments stating that due to a repurposing project the mill is currently undergoing, the mill's steam demands may change and Power Boiler No. 2 may be converted to burn only natural gas, mothballed, or shut down in the near future. After carefully considering the comments submitted to us, we have determined that in light of the repurposing project the mill is currently undergoing and the possibility of Power Boiler No. 2 being converted to burn only natural gas, it is appropriate to provide the facility with flexibility in how it must demonstrate compliance with the SO_2 emission limit for Power Boiler No. 2. Therefore, we are providing one alternative method for demonstrating compliance with the SO_2 BART emission limit: The owner or operator may demonstrate compliance with this emission limit by switching Power Boiler No. 2 to burn only pipeline quality natural gas provided that the preconstruction air permit is revised so as to permit combustion of only pipeline quality natural gas at Power Boiler No. 2. Therefore, if Power Boiler No. 2 is switched to burn only pipeline quality natural gas and the company's air permit is revised to reflect this, it would satisfy the requirement for demonstrating compliance with the boiler's SO_2 BART emission limit, and the related reporting and recordkeeping requirements would not be applicable.[56]

Taking into consideration the BART factors, we are finalizing our determination that BART for NO_X for Power Boiler No. 2 is an emission limit of 345 lb/hr on a 30 boiler-operating-day rolling average basis, which is consistent with the installation and operation of LNB. We are not making changes to the analysis we presented in our proposal of the cost and visibility improvement of this control measure.[57] As discussed in our proposal, the cost of LNB on Power Boiler No. 2 is estimated to cost \$1,951/NO_X ton removed, and it is projected to result in considerable visibility improvement at the most impacted Class I area (see Table 13). We are finalizing this NO_X emission limit as proposed.

TABLE 13—DOMTAR POWER BOILER NO. 2—SUMMARY OF THE 98TH PERCENTILE VISIBILITY IMPACTS AND IMPROVEMENT OF LNB

Class I area	Baseline visibility impact (Δdv)	Estimated visibility improvement from baseline (Δdv)
Caney Creek	0.844	0.181
Upper Buffalo	0.146	0.014
Hercules-Glades	0.105	0.011
Mingo	0.065	0.005
Cumulative Visibility Improvement (Δdv)	....	0.211

We proposed to require the facility to demonstrate compliance with this NO_X emission limit using the existing CEMS. We are finalizing this method for demonstrating compliance. As discussed above, during the public comment period for our proposal, Domtar submitted comments stating that due to a repurposing project the mill is currently undergoing, the mill's steam demands may change and Power Boiler No. 2 may be converted to burn only natural gas, mothballed, or shut down in the near future. After carefully considering the comments submitted to us, we have determined that it is appropriate to provide the facility with flexibility in how it must demonstrate compliance with the NO_X emission limit for Power Boiler No. 2. Therefore, we are providing one alternative method for demonstrating compliance with the NO_X BART emission limit: If Power Boiler No. 2 is switched to burn only natural gas and the facility's preconstruction air permit is revised such that Power Boiler No. 2 is permitted to burn only natural gas, the facility may demonstrate compliance with the NO_X emission limit by calculating emissions using AP–42 emission factors and fuel usage records provided that the operation of the CEMS is no longer required by any other applicable requirements. Under these circumstances, the facility would not be required to use the existing CEMS to demonstrate compliance with the NO_X BART emission limit.[58]

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[56] The alternative method to demonstrate compliance with the SO_2 emission limit is a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union, UMW,* 407 F.3d at 1259; *Fertilizer Inst,* 935 F.2d at 1311; *and Chocolate Mfrs. Ass'n,* 755 F.2d 1098.

[57] 80 FR 18944, 18987.

As discussed above, in response to comments we received from Domtar, we are also revising our definition of ''boiler-operating-day'' as it applies to Power Boilers No. 1 and 2 for BART purposes. For purposes of SO_2 and NO_X BART for Power Boilers No. 1 and 2, we are defining a boiler-operating-day as a 24-hour period between 6 a.m. and 6 a.m. the following day during which any fuel is fed into and/or combusted at any time in the power boiler.

We proposed to require the Domtar Ashdown Mill to comply with the SO_2 and NO_X BART emission limits no later than 3 years from the effective date of our final action, but invited public comment on this issue in our proposal. We received comments from Domtar requesting that we finalize a 5-year compliance date in light of the repurposing project the mill is currently undergoing. The repurposing project involves converting a non-BART paper machine at the mill into a fluff pulp line and may significantly affect the mill's steam demands and ultimately determine the future operating scenario for Power Boiler No. 2. The comments submitted by Domtar indicate that after the repurposing and reconfiguration of the mill systems is complete and fully operational and the mill has learned how to operate and optimize in its newly configured state, it will be able to determine steam demands and will then decide the future operating scenario for Power Boiler No. 2. Our understanding from the comments submitted is that this decision is expected to be made in late 2018, but that additional time will be needed after this to implement the future operating scenario selected by the mill for Power Boiler No. 2, which could include switching fuels, mothballing or retiring the boilers, or continued operation under current operating conditions. It is not EPA's intention to place an undue burden on the Domtar Ashdown Mill by requiring a compliance date that may not provide sufficient time for the mill to install controls or otherwise make the necessary operating changes to meet the boiler's BART emission limits after it has made a final decision on the future operating scenario for Power Boiler No. 2. We believe that a 3-year compliance date is generally sufficient for installation of the controls that the SO_2 and NO_X BART emission limits we are requiring can be achieved with. However, due to the special circumstances in this case, which we discuss in section V.E of this final rule, we believe it is reasonable and appropriate to establish a longer compliance date. Therefore, we are requiring the mill to comply with the SO_2 and NO_X BART emission limits no later than 5 years from the effective date of this final rule. We believe that this adequately addresses the commenter's concerns while complying with the CAA mandate that compliance with BART requirements must be as expeditiously as practicable, but in no event later than 5 years after promulgation of this FIP.

We are finalizing our determination that Domtar must satisfy the PM BART requirement by relying on the applicable Boiler MACT PM standard as revised.[59] We proposed that the same method for demonstrating compliance with the Boiler MACT PM standard must be used for demonstrating compliance with the PM BART emission limit. We proposed to require the source to comply with this emission limit for BART purposes as of the effective date of the final rule. During the public comment period, we received comments from Domtar seeking clarification regarding the requirements for compliance demonstration, reporting, and recordkeeping for our proposed PM BART determination for Power Boiler No. 2. Domtar requested that we ensure that the requirements for compliance demonstration, testing, reporting, and recordkeeping under the Boiler MACT standard for PM are consistent with those associated with the PM BART emission limit for Power Boiler No. 2. As the Domtar Ashdown Mill will be relying on compliance with the Boiler MACT PM standard to satisfy the PM BART requirement for Power Boiler No. 2, we believe that there is no need for a separate set of requirements for compliance demonstration, testing, monitoring, recordkeeping, and reporting to satisfy the PM BART requirement. This was our position at proposal, but we recognize that the regulatory text in our proposal may not have conveyed this clearly. Therefore, to provide clarification, we are revising the regulatory requirements of our FIP found under 40 CFR 52.173(c) that apply to Power Boiler No. 2 for PM BART to state that the mill shall rely on compliance with the Boiler MACT PM standard under 40 CFR part 63 Subpart DDDDD to satisfy the PM BART requirement for Power Boiler No. 2. In other words, compliance with the Boiler MACT PM standard applicable to Power Boiler No. 2 is sufficient to demonstrate compliance with the PM BART requirement. Additionally, we are also clarifying that Power Boiler No. 2 must satisfy the PM BART requirement by relying on the Boiler MACT PM standard that it is subject to at any given time, such that if the MACT PM standard and/or the compliance demonstration and recordkeeping requirements are revised in the future, the boiler must rely on those revised requirements to satisfy the PM BART requirement.

In response to comments we received from the company, we are revising our proposed compliance date for PM BART for Power Boiler No. 2. The company submitted comments requesting that we finalize a compliance date of 30 days after the effective date of the final rule instead of requiring the source to comply with BART as of the effective date of the final rule. The company noted that this would provide additional time for it to prepare compliance records. We determined that the company's request is reasonable and would provide the mill with additional time to understand the applicable BART requirements and to prepare compliance records and adjust recordkeeping systems without unduly delaying compliance with the BART emission limit. Therefore, we are requiring Power Boiler No. 2 to comply with the PM BART emission limit no later than 30 days from the effective date of this final rule.[60]

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[58] The alternative method to demonstrate compliance with the NO_X emission limit is a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union, UMW,* 407 F.3d at 1259; *Fertilizer Inst,* 935 F.2d at 1311; *and Chocolate Mfrs. Ass'n,* 755 F.2d 1098.

[59] Boiler MACT standards are required under CAA section 112, and are found at 40 CFR part 63, subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.

[60] The revised compliance date is a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document.

3. Reasonable Progress Analysis

a. Four-Factor Analysis

In our proposed rule, we explained that the CENRAP CAMx modeling with PSAT showed that sulfate from all source categories combined contributed 87.05 inverse megameters (Mm^{-1}) out of 133.93 Mm^{-1} of light extinction at Caney Creek on the average across the 20% worst days in 2002, which is approximately 65% of the total light extinction. At Upper Buffalo, sulfate from all source categories combined contributed 83.18 Mm^{-1} out of 131.79 Mm^{-1} of light extinction at Upper Buffalo on the average across the 20% worst days in 2002, which is approximately 63% of the total light extinction. Nitrate from all source categories combined contributed 13.78 Mm^{-1} out of 133.93 Mm^{-1} of light extinction at Caney Creek and 13.30 Mm^{-1} out of 131.79 Mm^{-1} of light extinction at Upper Buffalo, which is approximately 10% of the total light extinction at each Class I area on the average across the 20% worst days in 2002. The CENRAP CAMx modeling showed that on most of the 20% worst days in 2002, total extinction was dominated by sulfate at both Caney Creek and Upper Buffalo.[61] Additionally, total extinction at Caney Creek was dominated by nitrate on 4 of the days that comprise the 20% worst days in 2002, while a significant portion of the total extinction at Upper Buffalo on 2 of the days that comprise the 20% worst days in 2002 was due to nitrate.[62] Given their contribution to visibility impairment on the 20% worst days, we consider both SO_2 and NO_X to be key pollutants contributing to visibility impairment at Arkansas Class I areas, so it is appropriate to consider both SO_2 and NO_X controls in our reasonable progress analysis.

In our proposal, we explained that point sources are responsible for a majority of the total light extinction at each Class I area, contributing approximately 60% of the total light extinction. Point sources contributed 81.04 Mm^{-1} out of 133.93 Mm^{-1} of light extinction at Caney Creek and 77.80 Mm^{-1} out of 131.79 Mm^{-1} of light extinction at Upper Buffalo on the average across the 20% worst days in 2002. Because other source types (*i.e.*, natural, on-road, non-road, and area) each contributed a much smaller proportion of the total light extinction at each Class I area, we decided to focus only on point sources in our reasonable progress analysis for this planning period. Sulfate from point sources contributed 75.1 Mm^{-1} out of 133.93 Mm^{-1} of light extinction at Caney Creek and 72.17 Mm^{-1} out of 131.79 Mm^{-1} of light extinction at Upper Buffalo on the average across the 20% worst days in 2002, which is approximately 56% of the total light extinction at Caney Creek and 55% of the total light extinction at Upper Buffalo. Nitrate from point sources contributed 4.06 Mm^{-1} out of 133.93 Mm^{-1} of light extinction at Caney Creek and 3.93 Mm^{-1} out of 131.79 Mm^{-1} of light extinction at Upper Buffalo, which is approximately 3% of the total light extinction at each Class I area. Sulfate from Arkansas point sources contributed 2.20% of the total light extinction at Caney Creek and 1.99% at Upper Buffalo, and nitrate from Arkansas point sources contributed 0.27% of the total light extinction at Caney Creek and 0.14% at Upper Buffalo. We explained in our proposal that SO_2 emissions (a sulfate precursor) are the principal driver of regional haze on the 20% worst days in Arkansas' Class I areas, as visibility impairment in 2002 on the 20% worst days was largely due to sulfate from point sources. We also explained that on the 20% worst days in 2018, sulfate from Arkansas' point sources is projected to contribute 3.58% of the total light extinction at Caney Creek and 3.20% at Upper Buffalo, while nitrate from Arkansas' point sources is projected to contribute 0.29% of the total light extinction at Caney Creek and 0.25% at Upper Buffalo. Based on the CENRAP 2018 visibility projections, sulfate from point sources is expected to continue being the principal driver of regional haze on the 20% worst days at Arkansas' Class I areas.

As a starting point in our analysis to determine whether additional controls on Arkansas sources are necessary to make reasonable progress in the first regional haze planning period, we examined the most recent SO_2 and NO_X emissions inventories for point sources in Arkansas. In our examination of the SO_2 and NO_X emissions inventories for Arkansas' point sources, we found that the number of point sources in Arkansas that emit SO_2 and NO_X emissions is relatively small. Furthermore, a very small portion of the point sources in the state are responsible for a large portion of the statewide SO_2 and NO_X point-source emissions. Specifically, White Bluff, Independence, and Flint Creek are the three largest emitters of SO_2 and NO_X point-source emissions in the state and are collectively responsible for approximately 84% of the SO_2 point source emissions and 55% of the NO_X point-source emissions in the state.[63] As our proposed rule included SO_2 and NO_X emission limits under BART for White Bluff Units 1 and 2 and Flint Creek Unit 1 that are anticipated to result in a substantial reduction in SO_2 and NO_X emissions from these facilities, we proposed to determine that it is appropriate to eliminate these two facilities from further consideration of additional controls under the reasonable progress requirements for the first planning period. The Entergy Independence Plant is not subject to BART, and its emissions were 30,398 SO_2 tpy and 13,411 NO_X tpy based on the 2011 NEI. The Entergy Independence Plant is the second largest source of SO_2 and NO_X point-source emissions in Arkansas, accounting for approximately 36% of the SO_2 point-source emissions and 21% of the NO_X point-source emissions in the state. In our proposal, we explained that it was appropriate to focus our reasonable progress analysis on the Entergy Independence Power Plant because it is a significant source of SO_2 and NO_X as the second largest emitter of NO_X and SO_2 point-source emissions in the State. Consequently, addressing White Bluff and AEP Flint Creek under the BART requirements and Independence under the reasonable progress requirements will address a large proportion of the visibility impacts due to Arkansas point sources at Caney Creek and Upper Buffalo.

We also found that the remaining point sources in the state had much lower SO_2 and NO_X emissions than these facilities. For example, the point source with the fourth highest SO_2 emissions is Future Fuel Chemical Company, which contributes approximately 4.1% of the total SO_2 point-source emissions in the state (*i.e.*, 3,420 SO_2 tons out of statewide SO_2 point source emissions of 83,883 SO_2 tons). The point source with the fourth highest NO_X emissions is the Natural Gas Pipeline Company of America #308, which contributes approximately 5.1% of the total NO_X point source emissions in the state (*i.e.*, 3,194 NO_X tons out of statewide NO_X point source emissions of 62,984 NO_X tons). Based on the much smaller magnitude of these sources' emissions, we determined that the remaining point sources in the state are less likely to be significant contributors to regional haze (both on an actual and percentage basis) and thus did not warrant closer evaluation during this planning period. Because such a small number of point sources in Arkansas are responsible for a such large portion of the statewide SO_2 and NO_X point-source emissions in the state, we concluded that photochemical modeling or other more exhaustive analyses that we have performed in other regional haze actions were unnecessary to identify sources in Arkansas to evaluate under reasonable progress. In contrast, in states such as Texas where the universe of point sources is much larger and the distribution of SO_2 and NO_X emissions is very widespread, an evaluation of the state's emissions inventory alone was not sufficient to reveal the best potential candidates for evaluation under reasonable progress. For this reason, we explained in our Texas Regional Haze FIP that, due to the challenges presented by the geographic distribution and number of sources in Texas, the CAMx photochemical model was best suited for identifying sources to evaluate for reasonable progress controls.[64] We did not encounter these challenges in our Arkansas Regional Haze FIP and therefore did not conduct photochemical modeling.

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[61] See Arkansas Regional Haze SIP, Appendix 8.1—"Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," sections 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[62] See Arkansas Regional Haze SIP, Appendix 8.1—"Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," section 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[63] 80 FR 18944, 18991.

In our reasonable progress analysis for Independence, we considered the four statutory factors under CAA section 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A): The costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. Alongside the four statutory factors, we also considered the visibility improvement of controls. Although visibility is not one of the four mandatory factors explicitly listed for consideration under CAA section 169A(g)(1) or 40 CFR 51.308(d)(1)(i)(A), states or EPA have the option of considering the projected visibility benefits of controls in determining if the controls are necessary to make reasonable progress. In our proposal, we explained that SO_2 emissions are the principal driver of regional haze on the 20% worst days in Arkansas' Class I areas. While point source NO_X emissions are not the principal contributor to visibility extinction on the 20% worst days at Arkansas' Class I areas, NO_X is nevertheless a key pollutant since NO_X emissions contributed considerably to visibility impairment on a portion of the 20% worst days in 2002 based on CENRAP's CAMx source apportionment modeling. Further, our assessment of the Independence facility using CALPUFF dispersion modeling, which assesses the 98th percentile visibility impairment caused by the facility, indicated that Independence is potentially one of the largest single contributors to visibility impairment at Class I areas in Arkansas.[65] Therefore, we determined that it was appropriate to evaluate the Independence facility for both SO_2 and NO_X controls under reasonable progress.

Based on our reasonable progress analysis under 40 CFR 51.308(d)(1), we discussed in our proposal that SO_2 and NO_X controls at Independence would be cost-effective and would result in meaningful visibility benefits at Arkansas' Class I areas based on the maximum (98th percentile) facility impacts using CALPUFF dispersion modeling. Although the reasonable progress provisions of the Regional Haze Rule place emphasis on the 20% worst days, the CAA goal of remedying visibility impairment due to anthropogenic emissions encompasses all days. Thus, states and EPA have the discretion to consider the visibility impacts of sources and the visibility benefit of controls on days other than the 20% worst days in making their decisions, such as the days on which a given facility has its own largest impacts. Even if the days on which a given facility has its largest impacts are not the same as the 20% of days with the worst visibility overall, the facility's impacts will still need to be addressed for Arkansas' Class I areas to achieve the goal of natural visibility conditions. The Eighth Circuit previously addressed state and EPA use of CALPUFF for reasonable progress purposes.[66]

Based on our consideration of the four reasonable progress factors and the visibility impacts from Independence and the visibility improvement of controls, we proposed two alternative options for reducing emissions at Independence Units 1 and 2. Under Option 1, we proposed to require both SO_2 and NO_X controls. Under Option 2, we proposed to require only SO_2 controls. We solicited public comment on our two proposed options. In addition to Options 1 and 2, we also solicited public comment on any alternative SO_2 and NO_X control measures that could address the regional haze requirements for White Bluff Units 1 and 2 and Independence Units 1 and 2 for this planning period.

We received many comments opposed to our proposal to establish *any* controls on Independence to achieve reasonable progress. Many of these comments stated that it was not necessary to control or even evaluate Arkansas' sources under the CAA and Regional Haze Rule's reasonable progress requirements because Arkansas' Class I areas are projected to be below the uniform rate of progress (URP) in 2018 and because Arkansas' Class I areas are on track to meet the RPGs established by the state in the Arkansas Regional Haze SIP. As discussed in section V.C. of this final rule and in our RTC document, we have an obligation under the CAA and the Regional Haze Rule to conduct an analysis of the four reasonable progress factors. This obligation applies even when a Class I area is below the URP and even when monitoring data show that a Class I area is meeting or is projected to meet the RPG previously established by the state. The CAA and Regional Haze Rule are clear that the determination of what controls are necessary to make reasonable progress (and whose emission reductions dictate the RPGs) must be determined based on the four-factor analysis. *See* CAA section 169A(b)(2) & (g)(1); 40 CFR 51.308(d)(1)(i). Neither the CAA nor the Regional Haze Rule divest states or EPA of the authority and obligation to conduct a four-factor analysis for sources contributing significantly to visibility impairment based on existing or projected future visibility conditions at affected Class I areas. We discussed above and also in section V of this final rule that our four factor analysis focused on the Independence Plant because it is a significant source of visibility impairing pollutants, as it is the second largest source of SO_2 and NO_X point-source emissions in Arkansas.[67] The largest and third largest sources of SO_2 and NO_X point-source emissions in Arkansas are White Bluff and Flint Creek, for which we are requiring controls under the BART requirements in this final rule. In comparison to the SO_2 and NO_X emissions from the three largest point sources (*i.e.*, White Bluff, Independence, and Flint Creek), emissions from the remaining point sources in the state are relatively small and are less likely to be significant contributors to regional haze, both on an actual and percentage basis. Therefore, our reasonable progress analysis focused on the Independence Plant. As discussed in our proposal and throughout this final notice, based on our analysis of the four reasonable progress factors and our consideration of the baseline visibility impacts from Independence and the visibility improvement of potential controls, we determined that SO_2 and NO_X controls at Independence would be cost-effective and would result in meaningful visibility benefits at Arkansas' Class I areas, and therefore find that they are reasonable controls and are necessary to make reasonable progress.

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[64] 81 FR 296 (January 5, 2016).

[65] 80 FR 24872.

[66] *North Dakota* v. *EPA*, 730 F.3d 750, 764–66 (8th Cir. 2013) (discussing reasonable progress determination for the Antelope Valley station).

[67] The Independence Plant accounts for approximately 36% of the SO_2 point-source emissions and 21% of the NO_X point-source emissions in Arkansas (2011 NEI).

Other comments we received stated that Arkansas' point sources have a very small impact on visibility impairment at Arkansas' Class I areas on the 20% worst days and that we should therefore not require any controls at Independence under the reasonable progress requirements. At a minimum, these commenters argued, the contribution to visibility impairment at Arkansas' Class I areas on the 20% worst days from point-source nitrate emissions was insignificant, so NO_X controls for Independence were unnecessary. After carefully considering these comments, we continue to believe that Arkansas' point sources have a significant contribution to visibility impairment at Arkansas Class I areas on the 20% worst days. As we discuss in section V.J. of this final rule, CAMx source apportionment modeling conducted by Entergy Arkansas Inc.[68] (Entergy) and submitted to us during the public comment period showed that the contribution to visibility impairment due to emissions from the Independence facility alone are projected to be approximately 1.3% of the total visibility impairment during the 20% worst days in 2018 at each Arkansas Class I area. Considering that the CAMx photochemical modeling takes into account the emissions of thousands of sources, both in Arkansas and outside of the state, we consider this to be a significant contribution to visibility impairment at each Class I area and a large portion (approximately one-third) of the total contribution from all Arkansas point sources that can be addressed through installation of controls on two units at a single facility. The CAMx modeling also showed that at Upper Buffalo, the Independence facility's contribution to visibility impairment is greater than the contribution from all of the subject-to-BART sources addressed in this final action combined. In terms of deciviews, the average impact from Independence over the 20% worst days, based on Entergy's CAMx modeling and adjusted to natural background conditions, is over 0.5 dv at each of the Arkansas Class I areas. Together, the modeling results from Entergy's CAMx modeling and the CALPUFF modeling demonstrate that controls will provide meaningful visibility benefits toward the goal of natural visibility conditions.

While the majority of the visibility impacts due to Independence on the 20% worst days are due to SO_2, we note that NO_X emissions from the facility also have impacts on the 20% worst days. The CAMx source apportionment modeling submitted by Entergy showed that NO_X emissions from Independence are responsible for 30–40% of the visibility impairment in Arkansas' Class I areas on 2 of the 20% worst days (*i.e.,* 2 out of the 21 days that are the 20% worst of the days with Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data). We expect that installation of NO_X controls on Independence will provide visibility improvement on this portion of the 20% worst days and will also provide meaningful visibility improvement on the 98th percentile day, as shown by the CALPUFF dispersion modeling. After carefully considering all comments submitted to us during the comment period, we are finalizing both SO_2 and NO_X controls for Independence Units 1 and 2 to make reasonable progress at Arkansas' Class I areas (*i.e.,* proposed Option 1), because both SO_2 and NO_X are key pollutants contributing to visibility impairment, and because we have determined that these controls are cost effective and will provide for significant visibility benefits towards the goal of natural visibility conditions at Arkansas' Class I areas.

In response to comments we received on our initial cost analysis presented in our proposal, we have revised our cost estimate for dry FGD for Independence Units 1 and 2. Based on this revision to our cost analysis, we find that dry FGD is estimated to cost \$2,853/SO_2 ton removed at Unit 1 and \$2,634/SO_2 ton removed. Although these cost estimates are slightly higher than we estimated in our proposal, we continue to find these controls to be cost effective and well within the range of cost of controls found to be reasonable by EPA and the States in other regional haze actions. Dry FGD controls on Independence are also expected to result in considerable visibility improvement at Arkansas' Class I areas based on CALPUFF modeling of the maximum (98th percentile) visibility impacts from the facility (see Table 14).[69] As dry FGD will eliminate a majority of the SO_2 emissions from Independence,[70] we anticipate that on the 20% worst days these controls will also accordingly eliminate a majority of the visibility impairment due to SO_2 emissions from Independence. Taking into consideration the four reasonable progress factors and the visibility benefit of dry FGD controls, we conclude that these are reasonable controls and are therefore necessary to make reasonable progress. We are finalizing an SO_2 emission limit of 0.06 lb/MMBtu for Independence Units 1 and 2 based on a 30 boiler-operating-day rolling average basis, which is consistent with the installation and operation of dry FGD. We are requiring the facility to comply with this emission limit no later than 5 years from the effective date of this final rule.

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[68] Entergy Arkansas Inc. is one of the owners of White Bluff Units 1 and 2 and Independence Units 1 and 2. The company submitted CAMx photochemical modeling as part of its comments submitted during the public comment period. These and all other comments we received are found in the docket associated with this rulemaking.

[69] 80 FR 24872.

[70] As discussed in our proposal, dry FGD controls on Independence Units 1 and 2 are expected to reduce facility-wide SO_2 emissions by 26,902 tpy from a baseline emission rate of 29,780 tpy (*i.e.,* Units 1 and 2 combined). See 80 FR 18944, 18993.

TABLE 14—ENTERGY INDEPENDENCE PLANT—SUMMARY OF THE 98TH PERCENTILE BASELINE VISIBILITY IMPACTS AND IMPROVEMENT DUE TO DRY FGD

[Facility-wide]

Class I area	Facility-wide baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Caney Creek	2.512	1.096
Upper Buffalo	2.264	1.178
Cumulative Visibility Improvement at Arkansas' Class I areas (Δdv)		2.274

As discussed in our proposal, LNB/SOFA controls on Independence are estimated to cost $401/$NO_X$ ton removed at Unit 1 and $436/$NO_X$ ton removed at Unit 2,[71] which we consider to be very cost effective and well within the range of cost of controls found to be reasonable by EPA and the States in other regional haze actions. LNB/SOFA controls on Independence are also expected to provide considerable visibility benefits based on CALPUFF modeling of the maximum (98th percentile) visibility impacts from the facility (see Table 15).[72] As LNB controls will eliminate a large portion of the NO_X emissions from Independence,[73] we anticipate that these controls will also accordingly eliminate a large portion of the visibility impairment due to NO_X emissions from Independence on a portion of the 20% worst days. Taking into consideration the four reasonable progress factors and the visibility benefit of LNB/SOFA controls, we conclude that these are reasonable controls and are therefore necessary to make reasonable progress. As such, we are requiring NO_X controls for Independence Units 1 and 2 under the reasonable progress requirements.

TABLE 15—ENTERGY INDEPENDENCE PLANT—SUMMARY OF THE 98TH PERCENTILE BASELINE VISIBILITY IMPACTS AND IMPROVEMENT DUE TO LNB/SOFA

[Facility-wide]

Class I area	Facility-wide baseline visibility impact (Δdv)	Visibility improvement from baseline (Δdv)
Caney Creek	2.028	0.459
Upper Buffalo	2.003	0.198
Cumulative Visibility Improvement at Arkansas' Class I areas (Δdv)		0.657

We received comments from the company stating that Independence Units 1 and 2 are no longer expected to be able to consistently meet our proposed NO_X emission limit of 0.15 lb/MMBtu over a 30-boiler-operating-day period based on LNB/SOFA controls.[74] We have determined that the company has provided sufficient information to substantiate that the units are not expected to be able to meet our proposed NO_X emission limit of 0.15 lb/MMBtu when the units are primarily operated at less than 50% of their operating capacity. Therefore, we are finalizing a "bifurcated" NO_X emission limit for each unit.[75] We are requiring Independence Units 1 and 2 to meet a NO_X emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, where the average is to be calculated by including only the hours during which the unit was dispatched at 50% or greater of maximum capacity. In this particular case, the 30 boiler-operating-day rolling average is to be calculated for each unit by the following procedure: (1) Summing the total pounds of NO_X emitted during the current boiler operating day and the preceding 29 boiler operating days, including only emissions during hours when the unit was dispatched at 50% or greater of maximum capacity; (2) summing the total heat input in MMBtu to the unit during the current boiler operating day and the preceding 29 boiler operating days, including only the heat input during hours when the unit was dispatched at 50% or greater of maximum capacity; and (3) dividing the total pounds of NO_X emitted as calculated in step 1 by the total heat input to the unit as calculated in step 2. In addition to this limit that is intended to control NO$_X$ emissions when the units are operated at 50% or greater of maximum capacity, we are also establishing a limit in lb/hr that applies only when the units are operated at lower capacity. We are requiring Independence Units 1 and 2 to meet an emission limit of 671 lb/hr on a rolling 3-hour average, where the average is to be calculated by including emissions only for the hours during which the unit was dispatched at less than 50% of the unit's maximum heat input rating (*i.e.*, hours when the heat input to the unit is less than 4,475 MMBtu). We calculated this emission limit by multiplying 0.15 lb/MMBtu by 50% of the maximum heat input rating for each unit (*i.e.*, 50% of 8,950 MMBtu/hr, or 4,475 MMBtu/hr). As discussed in section V.F. in this final rule, in response to comments we received, we are shortening the compliance date for the NO$_X$ emission limit for Independence Units 1 and 2 from our proposed 3 years to 18 months.

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[71] Our cost analysis and visibility modeling analysis for LNB/SOFA for Independence Units 1 and 2, as presented in our proposal, is based on an emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average. As discussed in this final action, we received new information from Entergy that indicates that the source expects to be operating at less than 50% load more frequently and therefore no longer expects to be able to meet our proposed NO_X emission limit. We are therefore finalizing the bifurcated NO_X emission limit described in this final action. We recognize that the comments submitted by Entergy indicate that some of the assumptions used to calculate the cost effectiveness of NO_X controls for Independence may not exactly apply to future operations. However, because we found LNB/SOFA controls to be very cost effective, we expect that even if the change in operation of the source were known more precisely and were taken into account in our calculation of the cost ($/ton), these controls would continue to be cost effective. Therefore, we are not revising our cost effectiveness calculations or visibility improvement modeling of LNB/SOFA for Independence Units 1 and 2.

[72] 80 FR 24872.

[73] As discussed in our proposal, LNB/SOFA controls on Independence Units 1 and 2 are expected to reduce facility-wide NO_X emissions by 5,927 tpy from a baseline emission rate of 12,713 tpy (*i.e.,* Units 1 and 2 combined). See 80 FR 18944, 18996.

[74] Entergy submitted comments on this issue that are applicable to both White Bluff and Independence. We discuss and address these comments in more detail elsewhere in this final rule.

[75] The bifurcated emission limit is a logical outgrowth of our proposal based on the company's comments, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union, UMW,* 407 F.3d at 1259; *Fertilizer Inst,* 935 F.2d at 1311; *and Chocolate Mfrs. Ass'n,* 755 F.2d 1098.

We also received comments during the public comment period from Entergy that presented an alternative multi-unit approach to address the regional haze requirements for White Bluff Units 1 and 2 and Independence Units 1 and 2.[76] The company's alternative approach consisted of the following: Requiring White Bluff Units 1 and 2 and Independence Units 1 and 2 to comply with an SO$_2$ emission limit of 0.60 lb/MMBtu on a 30 boiler-operating-day rolling average beginning in 2018; requiring White Bluff Units 1 and 2 and Independence Units 1 and 2 to comply with a NO$_X$ emission limit of 1,342.5 lb/hr on a 30 boiler-operating-day rolling average based on the installation of LNB/SOFA within 3 years; and ceasing coal combustion at White Bluff Units 1 and 2 in 2027 and 2028. We note that we do not interpret Entergy's comments as suggesting that we adopt the elements in its alternative that are unique to White Bluff as an alternative to our proposed BART emission limits at the facility unless we also conclude that the remaining elements address any reasonable progress requirements for Independence. After carefully considering the comments we received specifically on this issue, we do not believe the comprehensive multi-unit strategy as presented by the company has potential to satisfy the BART requirements for White Bluff Units 1 and 2 and the reasonable progress requirements for Independence Units 1 and 2. We address this in more detail elsewhere in this final rule.

b. RPGs for Caney Creek and Upper Buffalo

We proposed RPGs for the 20% worst days for Caney Creek and Upper Buffalo of 22.27 dv and 22.33 dv, respectively that reflected the anticipated visibility conditions resulting from the combination of control measures from the approved portion of the 2008 Arkansas Regional Haze SIP and our FIP proposal. We received comments on our proposal indicating that our proposed RPGs for the 20% worst days for Caney Creek and Upper Buffalo improperly incorporated visibility improvements that would not occur until after 2018. After considering these comments, we agree that the RPGs should reflect anticipated visibility conditions at the end of the implementation period in 2018 rather than the anticipated visibility conditions once the FIP has been fully implemented. This approach is consistent with the purpose of RPGs and the direction provided in our 2007 Reasonable Progress Guidance.[77]

Section 169B(e)(1) of the CAA directed the Administrator to promulgate regulations that "include[e] criteria for measuring 'reasonable progress' toward the national goal." Consequently, we promulgated 40 CFR 51.308(d)(1) as part of the Regional Haze Rule. This provision directs states to develop RPGs for the most and least impaired days to "measure" the progress that will be achieved by the control measures in the state's long-term strategy "over the period of the implementation plan." [78] The current implementation period ends in 2018. RPGs "are not directly enforceable" like the emission limitations in the long-term strategy.[79] Rather, they fulfill two key purposes: (1) Allowing for comparisons between the progress that will be achieved by the state's long-term strategy and the URP,[80] and (2) providing a benchmark for assessing the adequacy of a state's SIP in 5-year periodic reports.[81] Consequently, in our 2007 Reasonable Progress Guidance, we indicated that states could consider the "time necessary for compliance" factor by "adjust[ing] the RPG to reflect the degree of improvement in visibility achievable within the period of the first SIP if the time needed for full implementation of a control measure (or measures) will extend beyond 2018." [82] In other words, RPGs need not reflect the visibility improvement anticipated from all of the control measures deemed necessary to make reasonable progress (as a result of the four-factor analysis) and included in the long-term strategy.

In this instance, we are taking final action on the Arkansas Regional Haze FIP 9 years after the state's initial SIP submission was due.[83] As a result, only some of the control measures that we have determined are necessary to satisfy the BART and reasonable progress requirements will be installed by the end of 2018. Some controls will not be installed until 2021. Because RPGs are only unenforceable analytical benchmarks, we think that it is appropriate to follow the recommendation in our 2007 Reasonable Progress Guidance and finalize RPGs that represent the visibility conditions anticipated on the 20% worst days at Caney Creek and Upper Buffalo by 2018. These RPGs are listed in the table below: [84] [85]

TABLE 16—REASONABLE PROGRESS GOALS FOR 2018 FOR CANEY CREEK AND UPPER BUFFALO

Class I area	2018 RPG 20% Worst days (dv)
Caney Creek	22.47
Upper Buffalo	22.51

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[76] As described in section I. of this notice, Entergy also submitted a comment after the close of the comment period, indicating that Entergy intends that a second alternative described in the late comment, involving only White Bluff, is a replacement for the multi-unit alternative previously described in its timely comments. Because the late comment is not a basis for our decision making in this final rule, we are responding in this final rule and in our RTC document to the alternative proposal described in the comments that Entergy filed during the comment period.

[77] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," dated June 1, 2007. We refer to this guidance as the "2007 Reasonable Progress Guidance" throughout this final notice.

[78] 40 CFR 51.308(d)(1).

[79] 40 CFR 51.308(d)(1)(iv).

[80] 40 CFR 51.308(d)(1)(ii).

[81] 40 CFR 51.308(g)–(h).

[82] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," at 5–2.

[83] We discuss in section II.A of this final rule the history of the state's submittals and our actions.

[84] These RPGs are calculated using the same methodology described in our proposal and TSD. See "CACR UPBU RPG analysis 2018.xlsx" for additional information on the calculation of the RPGs.

[85] The RPGs we are finalizing in this rulemaking for Caney Creek and Upper Buffalo are a logical outgrowth of our proposed RPGs based on comments we received, which are discussed in more detail elsewhere in the final rule and our RTC document. *See Int'l Union, UMW*, 407 F.3d at 1259; *Fertilizer Inst.*, 935 F.2d at 1311; *and Chocolate Mfrs. Ass'n* v. *Block*, 755 F.2d 1098.

4. Long-Term Strategy

We are finalizing our determination that the provisions in this final rule, in combination with provisions in the approved portion of the Arkansas Regional Haze SIP, fulfill the Regional Haze Rule's long-term strategy requirements. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve reasonable progress at Class I areas impacted by emissions from Arkansas. In this final rule, we are promulgating emission limits, compliance schedules, and other requirements for nine units subject to BART and for two reasonable progress units.

B. Interstate Visibility Transport

We are finalizing our determination that the control measures in the approved portion of the Arkansas Regional Haze SIP and our final FIP are adequate to prevent Arkansas' emissions from interfering with other states' required measures to protect visibility. Thus, the combined measures from both plans satisfy the interstate transport visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and the 1997 $PM_{2.5}$ NAAQS.

V. Summary and Analysis of Major Issues Raised by Commenters

We received comments at the public hearing held in Little Rock, as well as comments submitted electronically on *www.regulations.gov* and through the mail. The full text of comments we received from commenters is included in the publicly posted docket associated with this action at *www.regulations.gov.* Our RTC document, which is also included in the docket associated with this action, provides detailed responses to all significant comments received, and is a part of the administrative record for this action. Below we provide summaries of the more significant comments received and our responses to them. Our RTC document is organized similarly to the structure of this section (*e.g.,* Cost, Modeling, etc.). Therefore, if additional information is desired concerning how we addressed a particular comment, the reader should refer to the appropriate section in the RTC document.

A. General Comments

Comment: We received 238 comments in support of our rulemaking, specifically regarding the requirements to control SO_2, NO_X, and PM emissions from Arkansas' subject-to-BART sources, and to control emissions from the Independence facility pursuant to the Regional Haze Rule's reasonable progress requirements. Most of these commenters also expressed support for our proposed Option 1, which consists of both SO_2 and NO_X controls for Independence Units 1 and 2. These comments were from members representing various organizations and members of the general public. At the public hearing in Little Rock, Arkansas, 40 people expressed general support for the plan. The speakers at the public hearings included members of various organizations and members of the general public. Some of these commenters also stated that we should transition away from coal-fired power and that retrofitting these plants and allowing them to continue operating is not a sound long-term solution, but does signal progress in Arkansas towards cleaner energy sources.

Response: We thank the commenters for participating in the rulemaking and acknowledge their support of this action. As discussed in section IV. of this final rule, we are finalizing SO_2, NO_X, and PM controls for six facilities under the BART requirements and we are finalizing both SO_2 and NO_X controls for Independence under the reasonable progress requirements (proposed Option 1). Under the Regional Haze Rule, we are authorized to require affected sources to meet emission limits for visibility impairing pollutants (*i.e.,* SO_2, NO_X, and PM), but we are not authorized to dictate what type of technology the source must employ to meet those emission limits and we are not authorized to force sources to retire or to stop burning fossil fuels. However, sources may choose to voluntarily retire or switch fuels in order to comply with our emission limits.

Comment: We received one email from a citizen that opposed our proposal. The commenter expressed that it is not fair that we are requiring sources in Arkansas to spend a large amount of money in retrofits when other countries are not held to the same standards. The commenter questioned why other countries are given additional time to meet requirements. The commenter also expressed concern that our proposed controls would result in a higher electric bill that could mean no electricity for some people.

Response: We acknowledge the commenter's concerns. Consistent with the CAA, the regional haze program is concerned with remedying existing and preventing future impairment of visibility caused by manmade air pollution in mandatory Class I Federal areas (located in this country). Our action requires particular Arkansas sources to control emissions that impact visibility at Arkansas and Missouri Class I areas. Our action does not in any way expect Arkansas to make up for emissions from international sources. On the other hand, as we discussed in the preamble to the Regional Haze Rule, "the States should not consider the presence of emissions from foreign sources as a reason not to strive to ensure reasonable progress in reducing any visibility impairment caused by sources located within their jurisdiction."[86] While the goal of the regional haze program is to restore natural visibility conditions at Class I areas by 2064, the rule requires only that reasonable progress be made towards the goal during each planning period. In cases where it is not reasonable to meet the rate of progress needed to attain the goal by 2064, the Regional Haze Rule requires a state to demonstrate that this rate of progress is not reasonable, and that the state's selected rate of progress is reasonable for that planning period. While there is no indication at this time that emissions from international sources are anticipated to prevent Arkansas from attaining the goal of natural visibility conditions at its Class I areas, we recognize that in some cases it may not be possible to attain the goal by 2064 because of impacts from new or persistent international emissions sources or impacts from sources where reasonable controls are not available. However, states are still required to demonstrate that they are establishing a reasonable rate of progress that includes implementation of reasonable measures within the state to address visibility impairment in an effort to make progress towards the natural visibility goal during each planning period. We acknowledge the commenter's concern regarding potential increases in electricity rates. While our consideration of cost under the Regional Haze Rule is limited to the direct costs incurred by sources, consistent with the CAA's and Rule's source-specific focus, we are very sensitive to the ramifications of our actions and we seek to select the most cost-effective options when we propose and finalize these controls.

Comment: ADEQ submitted comments stating that it concurs with our proposed determination that the Georgia Pacific-Crossett Mill 6A and 9A Boilers are not subject to BART.

Response: We appreciate ADEQ's support of our proposed determination. As discussed in section IV. of this final action, we are finalizing our determination that the Georgia Pacific-

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[86] 64 FR 35714, 35755 (July 1, 1999).

Crossett Mill 6A and 9A Power Boilers are not subject to BART.

B. Entergy's Alternative Strategy for White Bluff and Independence

Comment: Entergy proposes an alternative multi-unit strategy to address the regional haze requirements for four units that it states EPA should adopt instead of finalizing the proposed controls for the four units. The alternative multi-unit strategy involves meeting an emission limit of 0.60 lb/MMBtu on a 30-day rolling average at White Bluff Units 1 and 2 and Independence Units 1 and 2 by 2018; ceasing coal combustion at White Bluff Units 1 and 2 by 2027 and 2028; and installing LNB/SOFA at White Bluff Units 1 and 2 and Independence Units 1 and 2 within 3 years. Based on Entergy's modeling, the company says it believes its alternative multi-unit proposal achieves virtually the same visibility benefit as the FIP proposal and that the alternative proposal would ensure that Arkansas' Class I areas remain below the URP glidepath. Entergy argues that the difference in the haze index between the proposed FIP controls and Entergy's alternative multi-unit strategy is too trivial to justify a $2 billion investment at White Bluff and Independence for the installation of dry FGD.

Response: After carefully considering the comments we received, we have determined that we cannot approve Entergy's alternative proposal consistent with the Clean Air Act and Regional Haze rule. This determination is based on our conclusion that the alternative is not a better than BART alternative, does not meet the BART requirement for White Bluff Units 1 and 2, does not meet the reasonable progress requirements, and does not provide for the same visibility benefits as the FIP while delaying a majority of the visibility benefits until several years later than the FIP. Below, we discuss our assessment of the merits of Entergy's alternative proposal as an alternative approach for both meeting the BART requirements of section 308(e) for White Bluff and meeting the requirements of sections 308(d)(1) and 308(d)(3) regarding reasonable progress.

As an initial matter, we note that Entergy does not appear to be proposing that we apply the provisions of sections 308(e)(2) and 308(e)(3) to determine that its multi-unit strategy is an alternative program that provides more reasonable progress than BART. To the extent that this is Entergy's proposal, we cannot approve Entergy's multi-unit plan as an alternative to BART because it does not meet the requirements of section 308(e)(2)(iii) that "all necessary emission reductions take place during the first planning period," *i.e.,* by December 31, 2018. Moreover, Entergy does not argue that its alternative would provide for "greater" reasonable progress towards achieving natural visibility conditions, only that its proposal would result in "virtually the same" visibility benefits. Thus, our assessment discussed below considers only the requirements of section 308(e)(1), which contains the source-specific BART requirements, in considering the provisions of Entergy's alternative proposal applicable to White Bluff.

Entergy proposes that White Bluff Units 1 and 2 would meet an SO_2 interim emission limit of 0.6 lb/MMBtu on a rolling 30-day average from 2018 through 2027/2028, when coal combustion at the two units would cease.[87] We note that the 0.6 lb/MMBtu interim emission limit is only slightly lower than the units' current SO_2 emission rates. The maximum monthly SO_2 emission rates for White Bluff Units 1 and 2 in 2009–2013 were 0.653 lb/MMBtu and 0.679 lb/MMBtu, respectively.[88] Thus, under Entergy's alternative proposal, White Bluff Units 1 and 2 would continue to operate for the remainder of the first planning period and throughout most of the second planning period at near the current emission rate, with only a slight actual reduction in SO_2 emissions. Because section 308(e)(1) and the BART guidelines require that a subject-to-BART source install and operate the best available emission reduction technology based on the five statutory factors, it is necessary to consider whether there are any additional SO_2 control measures, such as dry sorbent injection (DSI), that constitute BART during this interim period. Entergy has argued that with this limited remaining period of coal combustion, the cost per ton of SO_2 emissions reduction for dry scrubbers would be too high for it to be selected as BART for White Bluff. While we agree that a shorter remaining useful life might result in a conclusion that dry scrubbers are not cost effective, as part of the BART analysis, technically feasible control technologies beyond the interim SO_2 emission limit the company has proposed must be evaluated to determine if they are cost effective for use in the period before coal combustion ceases. In particular, DSI has a relatively low capital cost and may be cost effective even if operated for a short period of time.[89] Under Entergy's proposed strategy, White Bluff Units 1 and 2 would cease coal combustion towards the end of the second planning period. Therefore, it would be necessary to consider and evaluate DSI as a possible interim BART control option for White Bluff Units 1 and 2. Because Entergy has provided no analysis to demonstrate that there is no more effective interim SO_2 control that would constitute BART, the company's proposed strategy is not adequate to ensure that the BART requirements for White Bluff Units 1 and 2 will be met.

Even if it were not necessary to evaluate DSI or if we found it to not be cost effective for use at White Bluff in the interim period before coal combustion ceases, Entergy's alternative proposal would still not satisfy the BART requirements for White Bluff because it does not propose SO_2 and NO_X emission limits after coal combustion ceases or otherwise propose adopting a binding requirement to burn only natural gas or completely shut down the units. Entergy proposes to cease coal combustion at White Bluff Units 1 and 2 in 2027/2028, but its comments do not specify the operating conditions of White Bluff Units 1 and 2 after coal combustion ceases. The type of fuel White Bluff is permitted to burn after ceasing coal combustion will impact the emissions reductions actually achieved under Entergy's alternative proposal. Exhibit C to Entergy's comments indicates that the company assumes in its visibility modeling that SO_2 and NO_X emissions from White Bluff Units 1 and 2 will be zero under the company's alternative proposal (*i.e.,* "Entergy's proposed controls" scenario).[90] If Entergy's alternative proposal had included accepting a binding requirement to burn only natural gas at White Bluff Units 1 and 2 after coal combustion ceases, or a binding requirement to completely shut down the units, then we would agree that it would be appropriate to assume that SO_2 emissions from White Bluff will be zero beginning in 2027/2028. Similarly, if Entergy's alternative proposal had included accepting a binding requirement to completely shut down White Bluff, then we would agree that it would be appropriate to assume that NO_X emissions from White Bluff will be zero beginning in 2027/2028.

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[87] Although not specified in Entergy's written comments, the company met with us and confirmed that the interim emission limit would be met by combusting lower sulfur coal. See file titled "Record of Meeting October 27 2015," which is found in the docket for this rulemaking.

[88] 80 FR 18944, 18970; see also the spreadsheet titled "White Bluff R6 cost revisions2," which is found in the docket for this rulemaking."

[89] For example, Florida evaluated a shutdown option by December 31, 2020 for two BART units. After reviewing the Florida Regional Haze SIP, we concluded that the State should have evaluated DSI as a as a possible interim BART control option during the interim before the units shut down. We ultimately approved Florida's determination after evaluating the cost-effectiveness of DSI and concluding that such controls were not cost-effective in light of the remaining useful life of the units. See 78 FR 53250, 53261 (August 29, 2013).

[90] See "Regional Haze Modeling Assessment Report," dated August 4, 2015, submitted as Exhibit C to Entergy Arkansas Inc.'s comments.

Although, as we have already established, Entergy's alternative proposal cannot constitute a BART alternative because all necessary emission reductions will not take place during the first implementation period and the alternative proposal also does not satisfy the source-specific BART requirements of section 308(e)(1) for White Bluff, in response to Entergy's comment that its alternative proposal would achieve almost the same level of visibility benefit as the FIP, we compared the potential impacts of Entergy's proposal to our FIP. Despite the ambiguity in the comments submitted by Entergy regarding its alternative proposal, for purposes of assessing the visibility impacts of the company's proposed approach we have assumed that post-2028 SO_2 and NO_X emissions from White Bluff Units 1 and 2 will be zero under Entergy's alternative proposal. In Table 17, we compare the total annual SO_2 emissions reductions that would result under our FIP and under Entergy's alternative proposal when the alternative proposal is fully implemented in 2028 (*i.e.*, when coal combustion has ceased at White Bluff).[91] For consistency and to allow for direct comparison to our FIP proposal, in estimating the SO_2 emissions reductions anticipated to result from Entergy's alternative proposal we have assumed the same SO_2 baseline emissions we used for White Bluff and Independence in our proposal.[92] As shown in Table 17, although Entergy's alternative proposal would, after 2027/2028, achieve slightly greater SO_2 reductions at White Bluff Units 1 and 2 than our FIP proposal, it would achieve substantially lower SO_2 reductions at Independence Units 1 and 2. Under Entergy's proposed approach, Independence Units 1 and 2 would be subject to an SO_2 emission limit of 0.6 lb/MMBtu on a rolling 30-day average beginning in 2018.[93] This emission limit is only slightly lower than the current SO_2 emission rates from Independence Units 1 and 2. The maximum monthly SO_2 emission rates for Independence Units 1 and 2 in 2009–2013 were 0.631 lb/MMBtu and 0.612 lb/MMBtu, respectively.[94] We have no basis to assume that future emissions would be different from current rates in the absence of new SIP or FIP requirements, and so these current emission rates are the appropriate baseline for comparing strategies, rather than the currently permitted emission rates, which are higher. As such, under Entergy's proposal these units would continue to operate with minimal SO_2 emissions reductions. Unlike Entergy's proposed approach with respect to White Bluff, the proposed limits for Independence would not be interim emission limits. The company's alternative proposal does not include any further SO_2 controls for Independence Units 1 and 2, such as DSI or the eventual cessation of coal combustion. In contrast, we expect our proposed SO_2 emission limit of 0.06 lb/MMBtu would significantly and permanently reduce SO_2 emissions from Independence Units 1 and 2. As shown in Table 17, our FIP proposal would achieve substantially greater SO_2 emissions reductions at Independence than Entergy's alternative proposal. We estimate that the additional SO_2 emissions reductions that our FIP proposal would achieve at Independence compared to Entergy's alternative strategy are 11,621 SO_2 tpy at Unit 1 and 12,591 SO_2 tpy at Unit 2. In light of the minimal SO_2 emissions reductions that would be achieved at Independence under the company's proposed strategy, we expect that there would be correspondingly minimal visibility improvement with respect to the SO_2 controls it proposes for Independence.

TABLE 17—COMPARISON OF ANNUAL SO_2 EMISSIONS REDUCTIONS FROM WHITE BLUFF UNITS 1 AND 2 AND INDEPENDENCE UNITS 1 AND 2

[Post-2028]

Unit	SO_2 Baseline emissions (tpy)	FIP Proposal—annual SO_2 reductions [1]	Entergy alternative proposal—annual SO_2 reductions [2]	Additional SO_2 emissions reductions achieved by FIP proposal
White Bluff Unit 1	15,816	14,363	15,816	(1,453)
White Bluff Unit 2	16,697	15,221	16,697	(1,476)
Independence Unit 1	14,269	12,912	1,291	11,621
Independence Unit 2	15,511	13,990	1,399	12,591
Total—All four units combined (SO_2 tpy)	62,293	56,486	35,203	21,283

[1] These SO_2 reductions will begin taking place no later than 5 years from the effective date of this final FIP.

[2] This takes into account the full SO_2 reductions that would take place under Entergy's alternative proposal; a small amount of SO_2 reductions would begin taking place in 2018, but the majority of these SO_2 reductions would begin taking place in 2027/2028.

As shown in Table 17, considering the four units combined, we estimate that our FIP proposal would achieve annual emissions reductions of 21,283 SO_2 tpy more than Entergy's alternative proposal. With regard to visibility benefits, Entergy does not assert that its alternative proposal would provide equal or greater visibility benefits relative to our proposed FIP once the alternative is fully realized in the period after 2027/2028. Entergy states only that its alternative proposal would provide almost the same visibility benefit as our proposed FIP post-2027/2028. However, as illustrated in Table 17, it is clear that annual emissions would be significantly higher under the Entergy alternative and that the long-term visibility benefits of the Entergy alternative proposal would be significantly smaller than those of the proposed and final FIP. As we explained above, Entergy assumes in its visibility improvement projections that SO_2 and NO_X emissions from White Bluff Units 1 and 2 will be zero under the company's alternative proposal. The assumption of zero SO_2 emissions from White Bluff after coal combustion ceases would be appropriate only if Entergy's alternative proposal involves accepting a binding requirement to burn only natural gas or permanently shut down after coal combustion ceases. With respect to NO_X emissions from all four units of White Bluff and Independence, Entergy's multi-unit strategy includes the same level of NO_X control as our FIP proposal prior to the cessation of coal combustion at White Bluff in 2027/2028. Since Entergy's explanation of its alternative proposal does not specify the operating conditions of White Bluff Units 1 and 2 when coal combustion ceases in 2027/2028, we find that the assumption of zero NO_X emissions is also not adequately supported. However, even if we accept Entergy's assumption that NO_X emissions from White Bluff will be zero after coal combustion ceases and that its alternative proposal would thus achieve greater NO_X reductions compared to our FIP proposal, given the dominance of visibility impact from sulfate compared to nitrate at the affected Class I areas in Arkansas, the higher visibility impacts due to sulfate under the Entergy alternative proposal would more than outweigh any extra nitrate-related visibility benefit. Entergy's own CAMx modeling shows that even assuming zero SO_2 and NO_X emissions from White Bluff once it ceases coal combustion, its multi-unit alternative proposal would achieve less visibility benefit than the FIP controls at Arkansas' Class I areas, most significantly at Upper Buffalo where the benefit from Entergy's proposal is approximately only 66% of the benefit from the FIP (*i.e.*, 1.54 dv visibility benefit from the FIP compared to 0.97 dv from Entergy's alternative proposal).[95]

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[91] The SO_2 emissions reductions expected to result from our FIP will take place several years earlier than any significant SO_2 reductions under Entergy's alternative proposal. However, for purposes of comparing the long-term emissions reductions under the FIP and under the Entergy alternative, we are assessing the annual emissions reductions that will take place beginning in 2028, when the Entergy alternative would be fully implemented.

[92] In our proposal, for purposes of estimating the annual SO_2 emissions reductions due to controls on White Bluff Units 1 and 2 and Independence Units 1 and 2, we assumed an SO_2 emissions baseline that was determined by examining annual SO_2 emissions for the years 2009–2013, eliminating the year with the highest emissions and the year with the lowest emissions, and obtaining the average of the three remaining years. See 80 FR 18944, 18971, and 18992.

[93] Although not specified in Entergy's written comments, the company met with us and confirmed that this emission limit would be met by combusting lower sulfur coal. See file titled "Record of Meeting October 27 2015," which is found in the docket for this rulemaking.

[94] See the spreadsheet titled "White Bluff R6 cost revisions2," which is found in the docket for this rulemaking.

We also note that Entergy does not appear to be requesting in the comments submitted during the comment period that we adopt the elements in its alternative proposal that are unique to White Bluff as an alternative to our proposed BART emission limits at the facility unless we also conclude that the remaining elements address any reasonable progress requirements for Independence. In other words, Entergy's comments provide no indication that it is willing to accept a binding requirement to cease coal combustion at White Bluff by 2027/2028, unless we also accept the elements of its alternative proposal that are applicable to Independence as satisfying the reasonable progress requirements. Even if we had interpreted Entergy's comments as requesting that we adopt the elements in its alternative proposal that are unique to White Bluff as an alternative to our proposed BART emission limits at the facility without these elements being linked to the remaining elements addressing the reasonable progress requirements for Independence, we conclude that we would not be able to incorporate the Entergy alternative proposal into the final FIP as a way of meeting the BART requirement for White Bluff for the reasons already discussed above.[96]

Similarly, we also conclude that we cannot consider Entergy's proposal to meet the reasonable progress requirements with respect to Independence if Independence is considered in isolation. SO_2 emissions are the primary driver of regional haze in Arkansas' Class I areas on the 20% worst days and Independence is the second largest source of SO_2 emissions in Arkansas.[97] As explained in our proposal, our consideration of the four reasonable progress factors and consideration of visibility impacts and visibility improvement of controls for Independence revealed that dry scrubbers on Independence Units 1 and 2 are cost effective. These controls would provide significant visibility improvement as projected by our CALPUFF modeling focusing on the 98th percentile impacts from the source. We also discuss in section V.J. of this final rule and in our RTC document that the results of Entergy's CAMx photochemical modeling, which estimates the visibility impacts from Independence during the average of the 20% worst days, confirm and provide additional support to our determination that Independence significantly impacts visibility at Arkansas' Class I areas. Since Entergy's alternative proposal includes minimal SO_2 control for Independence, thus omitting controls that we found to be cost effective and that are anticipated to result in considerable visibility benefits at Arkansas' Class I areas, we conclude that the elements of Entergy's alternative proposal that are specific to Independence do not satisfy the reasonable progress requirements.

We recognize that ceasing coal combustion at White Bluff Units 1 and 2 could result in greater nonair environmental benefits and in more emission reductions of mercury and other hazardous air pollutants and CO_2/CO_{2e} than our proposed FIP. However, in assessing Entergy's alternative proposal, we do not find it necessary to weigh the nonair quality environmental benefits with the other statutory factors since we ultimately find that we cannot accept Entergy's alternative proposal because it does not satisfy the requirements of the Regional Haze Rule. As discussed earlier in our response, we conclude that Entergy's proposal does not satisfy the requirements to be considered a better-than-BART alternative under sections 308(e)(2) and 308(e)(3); does not satisfy the source-specific BART requirements under section 308(e)(1) for White Bluff; does not satisfy the reasonable progress requirements under section 308(d)(1); and does not provide for the same visibility benefits as the FIP, while delaying a majority of the visibility benefits until several years later than the FIP. For these reasons, we cannot adopt Entergy's alternative approach in lieu of our FIP.

In response to Entergy's comment regarding the cost to install dry FGD and as discussed in more detail in our RTC document, we have revised our cost calculations of SO_2 controls for White Bluff Units 1 and 2 in response to the comments received on our initial cost analysis.[98] As we discuss in more detail elsewhere in this final rule, based on our consideration of the five BART factors, we have determined that controls consistent with dry scrubber and LNB/SOFA installation are BART for White Bluff Units 1 and 2. After revising our cost estimates, we continue to believe that dry scrubber controls and LNB/SOFA controls are cost effective at White Bluff Units 1 and 2 and would result in significant visibility improvement at Arkansas' Class I areas based on our CALPUFF modeling of the 98th percentile visibility impacts from the facility.[99]

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[95] We discuss this, as well as Entergy's ranked statistical analysis and its photochemical modeling, in more detail elsewhere in this final rule and in our RTC document.

[96] We explain in an earlier part of our response why Entergy's alternative proposal does not satisfy the source-specific BART requirements of section 308(e)(1) for White Bluff.

[97] CENRAP CAMx modeling shows that on most of the 20% worst days in 2002, total extinction is dominated by sulfate at both Caney Creek and Upper Buffalo. Therefore, SO_2 emissions are considered the primary driver of haze in Arkansas' Class I areas. However, as discussed elsewhere in this final rule and in our RTC document, we consider both SO_2 and NO_X to be key visibility impairing pollutants in Arkansas' Class I areas. See Arkansas Regional Haze SIP, Appendix 8.1—"Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," sections 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

As we discuss in more detail elsewhere in this final rule, based on our consideration of the four reasonable progress factors and of the visibility impacts and visibility improvement of controls on Independence, we have determined that dry scrubbers and LNB/SOFA controls on Independence Units 1 and 2 are necessary to make reasonable progress at Arkansas' Class I areas. We have also revised our cost calculations of SO_2 controls for these units in response to the comments received on our initial cost analysis, and we continue to believe that both dry scrubber and LNB/SOFA controls are cost effective.[100] We also find that these controls on Independence would provide significant visibility improvement as projected by our CALPUFF modeling that focuses on the 98th percentile impacts from the facility.[101] Additionally, the CAMx photochemical modeling submitted by Entergy shows that the contribution to visibility impairment due to baseline emissions from the Independence facility alone are projected to be approximately 1.3% of the total visibility impairment during the average 20% worst days in 2018 at each Arkansas Class I area. We consider this to be a significant contribution to visibility impairment at each Class I area and a large portion (approximately one-third) of the total contribution from all Arkansas point sources. The results of Entergy's CAMx modeling confirm and provide additional support to our determination that Independence significantly impacts visibility at Arkansas' Class I areas. While the majority of the visibility impacts due to Independence on the 20% worst days are due to SO_2, we note that NO_X emissions from the facility also have impacts on the 20% worst days. Entergy's CAMx modeling shows that nitrate from Independence is responsible for 30–40% of the visibility impairment in Arkansas' Class I areas on 2 of the 20% worst days.[102] We expect that installation of cost-effective NO_X controls on Independence would provide visibility improvement on this portion of the 20% worst days, and as such, are requiring both SO_2 and NO_X controls under the reasonable progress requirements.

We are requiring White Bluff Units 1 and 2 under BART and Independence Units 1 and 2 under reasonable progress to each meet an SO_2 emission limit of 0.06 lb/MMBtu on a 30 boiler-operating-day rolling average. We are requiring White Bluff Units 1 and 2 under BART and Independence Units 1 and 2 under reasonable progress to each meet a NO_X emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, where the average is to be calculated by including only the hours during which the unit is dispatched at 50% or greater of maximum capacity. In addition, we are requiring White Bluff Units 1 and 2 under BART and Independence Units 1 and 2 under reasonable progress to each meet a NO_X emission limit of 671 lb/hr on a rolling 3-hour average, where the average is to be calculated by including emissions only for the hours during which the unit was dispatched at less than 50% of the unit's maximum heat input rating (*i.e.,* hours when the heat input to the unit is less than 4,475 MMBtu).

We do note that if Arkansas submits a regional haze SIP revision to replace our FIP, the state has the discretion to consider an approach to address the BART requirements for White Bluff that involves ceasing coal combustion at Units 1 and 2 by 2027/2028, but an approvable SIP revision must also include consideration and evaluation of DSI as a possible interim BART control option. With respect to Independence, a strategy that includes controls for Independence similar to the elements of Entergy's alternative proposal that are specific to White Bluff (*i.e.,* interim SO_2 controls, ceasing coal combustion in the near future, and NO_X controls) would also have potential merit with respect to addressing the reasonable progress requirements for Independence Units 1 and 2. The state may consider submitting a SIP revision that includes such a strategy for Independence to replace our FIP.

With regard to the comment that Entergy's alternative multi-unit strategy would ensure that Arkansas' Class I areas remain below the URP glidepath, we discuss in section V.C. of this final rule and in our RTC document that being on or below the URP glidepath does not mean that the BART requirements for White Bluff Units 1 and 2 and the reasonable progress requirements for Independence Units 1 and 2 are automatically satisfied.

Comment: Several commenters noted that as part of a multi-unit plan to improve visibility and to better manage its generation assets for reliability and costs, Entergy proposed in comments submitted to EPA to cease burning coal at White Bluff Units 1 and 2 by 2027 and 2028, one unit per year, and is prepared to take an enforceable commitment to that effect. The commenters stated that the CAA and the Regional Haze Rule require EPA and states to consider the remaining useful life of a source in BART determinations, which factors into the cost of compliance in the BART analysis. The commenters argue that as a result of Entergy's alternative proposal, EPA's proposed BART determination for White Bluff Units 1 and 2 has been rendered inapplicable, requiring EPA to undertake a new BART analysis to address the now reduced remaining useful coal-fired life of the units. The commenters noted that comments submitted by Entergy contain a revised dry FGD cost analysis from Sargent & Lundy (S&L) that takes into account current costs for dry FGD installation and argue that when the appropriate dry scrubber costs from the S&L analysis are considered, operating the dry FGD systems at White Bluff for only 6 or 7 years would result in a cost effectiveness of over $7,500 to $8,500 per ton at the White Bluff units, which is several times higher than EPA estimates and not cost effective.

Response: Entergy's comments propose a multi-unit strategy as an alternative to the proposed FIP. As discussed above, we do not interpret Entergy's comments submitted during the comment period as requesting that we adopt the elements in its alternative that are unique to White Bluff as an alternative to our proposed BART emission limits for the facility unless we also conclude that the remaining elements address any reasonable progress requirements for

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[98] Based on our revised cost analysis, we have found that dry scrubbers on White Bluff are estimated to cost $2,565/$SO_2$ ton removed at Unit 1 and $2,421/$SO_2$ ton removed at Unit 2.

[99] See 80 FR at 18972, 18974. Our FIP proposal provides a detailed discussion of the visibility improvement of these controls based on our CALPUFF modeling.

[100] Based on our revised cost analysis, we have found that dry scrubbers on Independence are estimated to cost $2,853/$SO_2$ ton removed at Unit 1 and $2,634/$SO_2$ ton removed at Unit 2. After revising our cost estimates, we continue to believe that these controls are cost effective.

[101] 80 FR 24872.

[102] This means 2 out of the 21 days that are the 20% worst of the days with IMPROVE monitoring data.

Independence. As we discuss in a previous response, we do not find that the comprehensive multi-unit alternative proposal as presented by the company satisfies the BART requirements for White Bluff Units 1 and 2 and the reasonable progress requirements for Independence Units 1 and 2. A chief element of Entergy's alternative is its proposal to cease coal combustion at White Bluff Units 1 and 2. It is unclear whether this would mean the shutdown or the repowering of White Bluff Units 1 and 2. Regardless of this ambiguity, a number of commenters have argued that because of Entergy's proposal, we should use a shorter remaining life in assessing the costs of controls at White Bluff. If we were to assume that Entergy were proposing changes at White Bluff regardless of our action regarding Independence, we could include in our final FIP an enforceable requirement for the shutdown (or repowering) and take that change into consideration as part of a BART determination. The BART Guidelines state that where unit shutdown affects the BART determination, the shutdown date should be assured by a federally or state-enforceable restriction preventing further operation.[103] Although we could include such a requirement in our FIP, the comments we received from Entergy during the public comment period do not indicate that it intends to cease coal combustion at White Bluff Units 1 and 2 at this time absent a broader agreement on appropriate controls for both White Bluff and Independence. As such, we do not consider it appropriate to include a requirement in our FIP to cease coal combustion at White Bluff Units 1 and 2 in our rule unless we were to also accept the Entergy proposal as meeting all requirements with respect to Independence.[104] Therefore, we consider it appropriate to assume a remaining useful life of 30 years for White Bluff Units 1 and 2 when determining BART for these units. We address specific comments regarding the White Bluff cost analysis in the section of this final rule where we discuss cost issues.

C. Reasonable Progress Goals and Reasonable Progress Analysis

Comment: Several commenters stated that EPA lacks evidence of a sufficient need to evaluate additional controls under reasonable progress for Arkansas point sources. These commenters argued that before evaluating controls under reasonable progress, EPA must first determine that further actions are necessary in Arkansas beyond BART to ensure that visibility improvement is continuing on or below the glide path for each affected Class I area. These commenters cited to the CAA and EPA guidance which they believe support their position that reductions beyond BART should not be required because the impacted Class I areas are at or below their glide paths. The commenters also pointed to ADEQ's "State Implementation Plan Review for the Five-Year Regional Haze Progress Report"[105] as evidence that Caney Creek and Upper Buffalo will be below the glide path in 2018. They claimed that EPA ignores ADEQ's Five-Year Progress SIP revision, which they argued demonstrates that Arkansas has achieved 73% of the 2018 RPG it established for Caney Creek (3.88 dv of improvement) and 66% of the 2018 RPG it established for Upper Buffalo (3.75 dv of improvement). The commenters argued that as a result of emission reductions achieved through regional and national programs, including MATS, CAIR, and CSAPR, future Clean Air Act programs such as implementation of the 1-hour SO_2 NAAQS, the revised ozone NAAQS and the Clean Power Plan, as well as the reductions for White Bluff and Independence that Entergy is proposing and the BART controls that EPA has proposed for the other sources in Arkansas, there is every reason to project continued improvement in visibility in Caney Creek and Upper Buffalo well beyond 2018.

Response: EPA disagrees with the comment that we can only evaluate controls under reasonable progress if further controls beyond BART are needed to be on or below the URP glidepath for a Class I area. Specifically, commenters cited section 169A(b)(2) of the Act, which requires regional haze regulations to "contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal." These commenters interpret the term "reasonable progress" to be defined as being on or below the URP glidepath, and that as long as a Class I area is on or below the URP glidepath, additional controls are not necessary under the reasonable progress requirements. This interpretation is incorrect and does not take into account other, more explicit, statutory and regulatory language. The CAA requires reasonable progress determinations to be based on consideration of "the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements." CAA section 169A(g)(1). The regional haze regulations under 40 CFR 51.308(d)(1)(i)(A) also require consideration of these four statutory factors in establishing the RPGs and a demonstration showing how these factors were taken into account.

We commonly refer to the evaluation of these four statutory factors as the "four-factor analysis" or "reasonable progress analysis." The statute and regulations are both clear that the states or EPA in a FIP have the authority and obligation to evaluate the four reasonable progress factors and that the decision regarding the controls required to make reasonable progress and the establishment of the RPG must be based on these factors identified in the CAA section 169A(g)(1) and the Regional Haze regulations under § 51.308(d)(1)(i)(A). While the regulations require that a state must also consider the URP glidepath in establishing the RPGs, this should not be interpreted to mean that the URP can or should be automatically adopted as the RPG without completing the requisite analysis of the four statutory factors. It also should not be interpreted to mean that a set of controls sufficient to achieve the URP is automatically sufficient for an approvable long-term strategy. Clearly, a state's obligation to set reasonable progress goals based on CAA section 169A(g)(1) and § 51.308(d)(1) applies in all cases, without regard to the Class I area's position on the URP. Since an evaluation of the factors is required regardless of the Class I area's position on the glidepath, this necessarily means that the CAA and the Regional Haze regulations envisioned that controls could be required under reasonable progress even when a Class I area is on or below the URP glidepath. There is nothing in the CAA or Regional Haze regulations that suggests that a State's obligation, or EPA's in a FIP, to ensure reasonable progress can be met by just meeting the URP.[106]

Some commenters also argue that the EPA's 2007 Reasonable Progress

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[103] See Appendix Y to 40 CFR part 51—Guidelines for BART Determinations Under the Regional Haze Rule, section IV.D.4.k.

[104] Additionally, as discussed above, Entergy did not submit sufficient information to demonstrate that there are no additional SO_2 control measures, such as DSI, that constitute BART even in light of a limited remaining useful life for White Bluff.

[105] Available at *http://www.adeq.state.ar.us/air/planning/pdfs/ar_5yr_prog_rep_review-final-6-2-2015.pdf.*

[106] 77 FR 14604, 14629.

Guidance suggests that controls under reasonable progress are not necessary if a Class I area is on or below the URP glidepath. The specific part of the Reasonable Progress Guidance that some of the commenters point to states that:

> Given the significant emissions reductions that we anticipate to result from BART, the CAIR, and the implementation of other CAA programs, including the ozone and $PM_{2.5}$ NAAQS, for many States [determining the amount of emission reductions that can be expected from identified sources or source categories as a result of requirements at the local, State, and federal levels during the planning period of the SIP and the resulting improvements in visibility at Class I areas] will be an important step in determining your RPG, and it may be all that is necessary to achieve reasonable progress in the first planning period for some States.[107]

We see nothing in the Reasonable Progress Guidance indicating that additional controls can only be required if further action beyond BART is needed to remain on or below the URP glidepath. Nor do we see anything in the Reasonable Progress Guidance indicating that a state (or EPA) is exempt from completing the four factor analysis if a Class I area is on or below the URP glidepath. As discussed above, the CAA and Regional Haze regulations are clear that an evaluation of the four statutory factors is required, and this requirement applies regardless of the Class I area's position on the glidepath. We noted in our FIP proposal that the preamble to the Regional Haze Rule states that the URP does not establish a "safe harbor" for the state in setting its progress goals:

> If the State determines that the amount of progress identified through the [URP] analysis is reasonable based upon the statutory factors, the State should identify this amount of progress as its reasonable progress goal for the first long-term strategy, unless it determines that additional progress beyond this amount is also reasonable. If the State determines that additional progress is reasonable based on the statutory factors, the State should adopt that amount of progress as its goal for the first long-term strategy.[108]

Being projected to meet the URP for 2018 does not justify dismissing the analysis required under CAA section 169A(g)(1) and § 51.308(d)(1) in determining reasonable progress and establishing the RPGs, nor does it automatically mean that no additional controls beyond BART are required under reasonable progress. The URP is an analytical requirement created by regulation to ensure that states consider the possibility of setting an ambitious reasonable progress goal. Its purpose is to complement, not usurp, the reasonable progress analysis. Based on the analysis of the four statutory factors required under the CAA and Regional Haze regulations, a state (or EPA in a FIP) may determine that a greater or lesser amount of visibility improvement than what is reflected in the URP is necessary to demonstrate reasonable progress.[109] Based on our analysis of the factors under CAA section 169A(g)(1) and § 51.308(d)(1), along with consideration of the visibility improvement of controls, we determined that there are reasonable controls available for Independence that would be cost-effective and would result in meaningful visibility benefit at Arkansas' Class I areas. Because we have identified that additional progress (beyond the amount reflected in the URP) is reasonable based on the statutory factors and our consideration of the visibility impacts, we are required to adopt that amount of progress under the reasonable progress requirements. It is for this reason, we are requiring controls on Independence. It is not, as some commenters contend, "for the sole purpose of achieving emissions reductions."

We note that our conclusion here is consistent with our final action on the Arkansas Regional Haze SIP, where we disapproved Arkansas' RPGs specifically because the state established its RPGs without conducting an evaluation of the four statutory factors and did so based on the fact that its Class I areas are below the URP glidepath. In the preamble to our final action on the Arkansas Regional Haze SIP, we were clear that an evaluation of the four statutory factors is required regardless of the Class I area's position on the URP glidepath:

> [B]eing on the "glidepath" does not mean a state is allowed to forego an evaluation of the four statutory factors when establishing its RPGs. Based on an evaluation of the four statutory factors, states may determine that RPGs that provide for a greater rate of visibility improvement than would be achieved with the URP for the first implementation period are reasonable.[110]

Our final action on the Arkansas Regional Haze SIP was published in the **Federal Register** on March 12, 2012, and became effective on April 11, 2012. We reiterate in this final action that the CAA and Regional Haze regulations require an analysis of the four reasonable progress factors regardless of a Class I area's position on the URP and that being below the glide path does not automatically mean that no controls are necessary under reasonable progress.

With regard to the comment contending that we are ignoring data from ADEQ's Five-Year Progress Report SIP revision, we note that Arkansas submitted the first 5-year report to EPA in June 2015, and that we are not addressing that SIP revision within this action.[111] The 5-year progress report is a separate requirement from the regional haze SIP required for the first and subsequent planning periods, and it has separate content and criteria for review. We are therefore not obligated to consider or take action on the 5-year progress report at the same time we promulgate our FIP.

We acknowledge that recent IMPROVE monitoring data indicate there has been visibility improvement in Arkansas' Class I areas. But even assuming that the current trend in visibility improvement will continue, as the commenter argues, this does not divest us from our authority and obligation to conduct a reasonable progress analysis, nor does it justify the dismissal of controls for Independence that we have determined, pursuant to that analysis, are cost-effective and would result in meaningful visibility benefit at Arkansas' Class I areas. The commenters point out that even without the BART and reasonable progress controls required by our FIP, Caney Creek has achieved 73% and Upper Buffalo has achieved 66% of their respective 2018 RPGs established by Arkansas based on 5-year average data from IMPROVE monitors as of 2011. However, even if we had approved these RPGs (which we did not), achieving or being projected to achieve the RPG does not necessarily demonstrate that a state has satisfied its requirements under BART and reasonable progress. The state or EPA must complete the requisite analyses to determine appropriate controls and emission limits under the BART and reasonable progress requirements, and must adopt and enforce these controls and emission limits. The numeric RPGs are calculated by taking into account the visibility improvement anticipated from these enforceable emission limitations and other control measures (including BART, reasonable progress, and other "on the books" controls). The Regional Haze Rule provides that these emission limitations and control measures are what is enforceable, not the RPGs themselves.[112] Thus, the RPGs are intended to provide a degree of transparency regarding the rate of improvement in visibility anticipated for each Class I area over the planning period of the SIP.[113]

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[107] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," at 4–1.

[108] 80 FR at 18992.

[109] 64 FR 35714, 35732.

[110] 77 FR at 14629.

[111] We anticipate taking action on ADEQ's Five Year Progress Report SIP revision in a separate, future action.

As noted above, we disapproved Arkansas' RPGs in our March 12, 2012 final action on the Arkansas Regional Haze SIP[114] because the state did not complete the required four-factor analysis in establishing the RPGs. Further, the state's RPGs were based on BART determinations that were not in accordance with the CAA and Regional Haze regulations. As such, the State's RPGs are not a reflection of the controls necessary to make reasonable progress, and any arguments upholding or suggesting that the state's RPGs are appropriate or adequate are outside the scope of this action. That Arkansas' Class I areas are on track to achieve the disapproved RPGs by 2018 does not mean that the reasonable progress requirements have been satisfied, nor does it justify no additional controls under reasonable progress.

Comment: Some commenters argued that our FIP proposal was improper because it adopted an individual source-based approach to setting RPGs, and that this is inconsistent with the CAA. Another commenter claimed that EPA failed to explain how factors required to be considered in setting the RPGs, which are themselves not enforceable, could somehow be used to require specific enforceable limits for a single plant.

Response: While our FIP does consider and ultimately apply controls on an individual source basis to assure reasonable progress, this is consistent with the CAA, our regulations, and past EPA guidance. The four statutory factors under CAA Section 169A(g) and 40 CFR 51.308(d)(1)(i)(A) are directed to the listed possible features or consequences of potential emission control measures for sources, including individual stationary sources. The CAA and the Regional Haze regulations expressly set forth that the reasonable progress analysis must consider the "compliance" time and costs for "potentially affected sources." A state determines the rate of progress that is reasonable for a Class I area after taking into account the four statutory factors—as applied to specific sources or groups of sources—to determine what additional controls should be required in its regional haze SIP. Thus, individual stationary sources may be subject to emission limits and source specific analysis when determining whether additional controls are necessary to make reasonable progress.

The commenter's suggestion that because the RPGs are not themselves enforceable we cannot require specific enforceable limits for a single plant is not consistent with the requirement that each regional haze SIP or FIP include enforceable emissions limitations as necessary to ensure that the SIP or FIP will provide reasonable progress toward the national goal of natural visibility conditions. The numeric RPGs established by the state or EPA represent the best estimate of the degree of visibility improvement that will result in 2018 from changes in emissions inventories, changes driven by the particular set of control measures the state has adopted in its regional haze SIP or EPA in a regional haze FIP to address visibility, as well as all other enforceable measures expected to reduce emissions over the period of the SIP from 2002 to 2018.[115] Thus, the RPGs are intended to provide a degree of transparency regarding the rate of improvement in visibility anticipated for each Class I area over the planning period of the SIP. But the RPGs themselves are not enforceable.[116] EPA cannot enforce an RPG in the sense of seeking to apply penalties on a state for failing to meet the RPG or obtaining injunctive relief to require a state to achieve its RPG. However, the long-term strategy can and must contain emission limits and other control measures that apply to specific sources under the reasonable progress requirements, and that are themselves enforceable. The fact that the RPGs are not enforceable does not mean that we cannot conduct a source-specific evaluation of the reasonable progress factors or require source-specific emission limits under the reasonable progress requirements.

Comment: EPA treated Independence Units 1 and 2 as if they were subject-to-BART units by ignoring whether controls at the units are needed to improve visibility and looking only at whether controls are cost effective. EPA's failure to assess and document the contribution to visibility impairment at any relevant Class I area from any Arkansas point source, including Independence, is contrary to past rulemakings and is inconsistent with the detailed approach taken by EPA Region 6 in its promulgation of the Texas Regional Haze FIP. The Independence plant was apparently singled out by EPA for additional pollution controls under reasonable progress, while other non-BART emission sources were not. EPA does not provide any explanation for its selective treatment in this case other than noting that the Independence is among the top three largest point sources in the state. EPA's justification for imposing SO_2 and NO_X emission limits on Independence is not based on rational policy, legal, or environmental grounds and, as a result, it is arbitrary and capricious. EPA's primary justification for proposing reasonable progress limits at Independence is that "it would be unreasonable to ignore a source representing more than a third of the State's SO_2 emissions and a significant portion of NO_X point source emissions." EPA further supports its conclusion that emission limits based on the installation of major control technology are justified based on a finding that the proposed controls at Independence are cost effective. However, the fact that a source, which is not subject to BART, may have significant SO_2 or NO_X emissions, or that it would be cost effective to control such emissions, is irrelevant for reasonable progress purposes. This is an inapplicable and inadequate justification to identify sources for control under a reasonable progress analysis. EPA did not appropriately analyze which sources, if any, should be controlled for reasonable progress and did not follow the procedures it has regularly used in other regional haze FIPs.

Response: We did not treat Independence as if it were a subject-to-BART source, nor did we ignore whether controls at the facility are needed to improve visibility, or only look at whether controls are cost effective. Under the CAA and 40 CFR 51.308(d)(1), we must consider the following four factors in our reasonable progress analysis: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and nonair quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. These are the factors we took into consideration in our proposal. As we discuss in our proposal and elsewhere in this final rule, although visibility is not one of the four mandatory factors explicitly listed for consideration under CAA section 169A(g)(1) or 40 CFR 51.308(d)(1)(i)(A), states or EPA have the option of considering the projected visibility benefits of controls in determining if the controls are necessary to make reasonable progress. We modeled both the baseline visibility impacts from the Independence facility and the visibility benefit of controls using CALPUFF dispersion modeling. Based on our consideration of the four reasonable progress factors as well as the baseline visibility impacts from Independence and the visibility improvement of potential controls, we determined that reasonable controls for SO_2 and NO_X are available for Independence Units 1 and 2 that are cost effective and would result in a large amount of visibility improvement in Arkansas' Class I areas in terms of the 98th percentile impacts from the source.[117] Therefore, the claim that we ignored whether controls at the units are needed to improve visibility is incorrect.

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[112] 64 FR 35714, 35733.

[113] The RPGs are intended to provide the state or EPA's best estimate of the amount of visibility improvement in deciviews anticipated for each Class I area over the planning period of the SIP or FIP.

[114] 77 FR 14604.

[115] 64 FR at 35733.

[116] See 51.308(d)(1)(v).

We also disagree that the fact that a non-BART source has significant SO_2 or NO_X emissions, or that it would be cost-effective to control such emissions, is irrelevant in determining what sources to take a closer look at and evaluate under reasonable progress. As noted above, the cost of compliance is one of the statutory factors that EPA is required to consider in a reasonable progress analysis, meaning that the cost effectiveness of potential controls is not irrelevant for reasonable progress purposes. Significant SO_2 or NO_X emissions from a source is generally an indication that there may be significant visibility impacts at nearby Class I areas and that installation of more effective controls, if any are available, may result in substantial emissions reductions and meaningful visibility improvement. As noted above, states and EPA have the option of considering the projected visibility benefits of controls in determining if the controls are necessary to make reasonable progress. Therefore, we find that consideration of a source's emissions and whether it would be cost-effective to control such emissions is appropriate and relevant for reasonable progress purposes.

The commenter makes the incorrect claim that our primary justification for imposing emission limits under reasonable progress for Independence Units 1 and 2 is that it would be unreasonable to ignore a source representing more than a third of the state's SO_2 emissions and a significant portion of NO_X point source emissions. While we did state in our FIP proposal that it would be unreasonable to ignore a source representing more than a third of the state's SO_2 emissions and a significant portion of NO_X point source emissions, the commenters took this statement out of context. The full citation from our FIP proposal referenced by the commenters is the following:

> We believe it is appropriate to evaluate Entergy Independence even though Arkansas Class I areas and those outside of Arkansas most significantly impacted by Arkansas sources are projected to meet the URP for the first planning period. This is because we believe that in determining whether reasonable progress is being achieved, it would be unreasonable to ignore a source representing more than a third of the State's SO_2 emissions and a significant portion of NO_X point source emissions.[118]

As evidenced by the full citation from our FIP proposal, the fact that we considered it unreasonable to ignore a source representing more than a third of the State's SO_2 emissions and a significant portion of NO_X point source emissions was our primary justification for looking more closely and evaluating the Independence plant in our reasonable progress analysis. It was not, as the commenter contends, our justification for imposing controls on Independence. As we discuss in our FIP proposal and elsewhere in this final action, our decision to require controls on Independence is based on our analysis under § 51.308(d)(1), as required by the CAA and Regional Haze Rule.

We do not agree with the commenter's allegation that we did not appropriately analyze what sources, if any, should be controlled under reasonable progress. To the extent that the commenter contends that our process for determining which sources should be evaluated under reasonable progress was incorrect because we did not conduct photochemical modeling, such argument is incorrect. To the extent that the commenter contends that we treated the Independence facility like a BART source because we evaluated it under the reasonable progress requirements without conducting photochemical modeling to identify potential sources to evaluate under reasonable progress, this is also incorrect. We are not required to conduct photochemical modeling in a reasonable progress analysis. Our 2007 Reasonable Progress Guidance states that "The RHR gives States wide latitude to determine additional control requirements, and there are many ways to approach identifying additional reasonable measures; however, you must at a minimum, consider the four statutory factors."[119] The states or EPA in the context of a FIP have wide discretion in deciding what approaches, methods, and tools to use in identifying source categories, specific point sources, or pollutants to evaluate for additional controls under the reasonable progress requirements, provided that a reasonable rationale for the approach used is provided. There are a number of different approaches states or EPA in the context of a FIP have used in identifying sources for reasonable progress evaluation, but they usually center around the general premise of evaluating the biggest sources and/or the biggest impactors on visibility. While the states or EPA have the discretion to consider visibility in a reasonable progress analysis, photochemical modeling is not required for purposes of conducting a reasonable progress analysis.

Our FIP proposal provided a detailed explanation of how we determined what sources to evaluate for controls under reasonable progress, and we provided a reasonable rationale for the approach we used. The first step in our analysis involved determining what source categories or specific point sources it would be appropriate to look at more closely and evaluate under the reasonable progress requirements in § 51.308(d)(1) to determine if additional controls are necessary. We explained in our proposal that it was appropriate to focus our analysis on point sources since the other source categories (*i.e.,* natural, on-road, non-road, and area) each contribute a much smaller proportion of the total light extinction at each Class I area in Arkansas based on the CENRAP CAMx modeling.[120] At Caney Creek, point sources contribute 81.04 Mm^{-1} out of a total light extinction of 133.93 Mm^{-1} on the average across the 20% worst days in 2002, or approximately 60.5% of the total light extinction. At Upper Buffalo, point sources contribute 77.80 Mm^{-1} out of a total light extinction of 131.79 Mm^{-1} on the average across the 20% worst days in 2002, or approximately 59% of the total light extinction. In comparison, area sources, which are the source category with the next highest contribution to the total light extinction at each Class I area, contribute approximately 13.3% of the total light extinction at Caney Creek and 15.5% at Upper Buffalo. The remaining source categories each contribute less than 6% of the total light extinction at each Class I area. Therefore, we concluded that it was appropriate to focus our analysis on point sources.

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[117] CAMx source apportionment modeling was submitted to us by Entergy Arkansas Inc. during the comment period. This modeling shows that Independence has significant visibility impacts in Arkansas Class I areas on the 20% worst days, and further supports our decision to require controls for Independence under reasonable progress. We discuss Entergy Arkansas Inc.'s photochemical modeling and the visibility impacts due to SO_2 and NO_X from Independence on the 20% worst days elsewhere in this final rule.

[118] 80 FR at 18992.

[119] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," at 4–2.

[120] See 80 FR 18944, 18989.

The CENRAP CAMx modeling shows that on most of the 20% worst days in 2002, total extinction was dominated by sulfate at both Caney Creek and Upper Buffalo.[121] Additionally, total extinction at Caney Creek was dominated by nitrate on 4 of the days that comprise the 20% worst days in 2002 and a significant portion of the total extinction at Upper Buffalo on 2 of the days that comprise the 20% worst days in 2002 was due to nitrate.[122] The CENRAP CAMx modeling also shows that sulfate from point sources was responsible for approximately 54.8% of the total visibility impairment at Upper Buffalo and 56.1% at Caney Creek on the 20% worst days in 2002. Nitrate from point sources was responsible for approximately 3% of the total visibility impairment at each Class I area on the 20% worst days in 2002. As such, although SO_2 emissions are the primary contributor to regional haze in Arkansas' Class I areas on the 20% worst days, NO_X emissions are also a key contributor. Thus, consistent with our Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,[123] we found it appropriate to evaluate both SO_2 and NO_X controls under reasonable progress.

We explained in our FIP proposal that as a starting point in our analysis to determine whether additional controls on Arkansas point sources are reasonable in the first regional haze planning period, we examined the most recent SO_2 and NO_X emissions inventories for point sources in Arkansas (NEI 2011 v1).[124] We reasoned that examination of the emissions inventories is appropriate because significant SO_2 or NO_X emissions from a source are generally an indication that it may be having significant visibility impacts at nearby Class I areas and that installation of controls may result in substantial emissions reductions and meaningful visibility improvement. We did not conduct photochemical modeling or other more exhaustive analyses to identify potential candidates to evaluate under reasonable progress, and while we recognize that this approach is different from the approaches and methods that we have used or approved in other regional haze actions, we find that the approach we are taking in this action is appropriate given the specific circumstances. In particular, our examination of the SO_2 and NO_X emissions inventories for Arkansas' point sources revealed that the number of point sources that emit SO_2 and NO_X emissions is relatively small. Furthermore, a very small portion of the point sources in the state is responsible for a large portion of the statewide SO_2 and NO_X point source emissions. Specifically, White Bluff, Independence, and Flint Creek are collectively responsible for approximately 84% of the SO_2 point source emissions and 55% of the NO_X point source emissions in the state. Consequently, addressing these sources under the regional haze program will address a large proportion of the visibility impacts due to Arkansas point sources. We are requiring SO_2 and NO_X controls for White Bluff and Flint Creek under the BART requirements in this final action, which will substantially reduce emissions from these two facilities. The Independence Plant, which is not a subject-to-BART source, contributes approximately 36.2% of the total SO_2 point source emissions in the state (30,398 SO_2 tons out of total SO_2 point source emissions of 83,883 SO_2 tons, based on the 2011 NEI).[125] This source also contributes approximately 21.3% of the total NO_X point source emission in the state (13,411 NO_X tons out of total NO_X point source emissions of 62,984 NO_X tons). Based on this examination, we determined that the magnitude of emissions from the Independence Plant warranted further evaluation of the source to determine if it is a significant contributor to regional haze in Arkansas' Class I areas and whether controls at the facility are needed based on an analysis under § 51.308(d)(1).

After White Bluff, Independence, and Flint Creek, the remaining point sources in the state have much lower SO_2 and NO_X emissions than these facilities. In other words, the magnitude of SO_2 and NO_X emissions from point sources in Arkansas drops off considerably after the top 3 emitters. We stated the following in our proposal:

> The fourth largest SO_2 and NO_X point sources in Arkansas are the Future Fuel Chemical Company, with emissions of 3,421 SO_2 tpy, and the Natural Gas Pipeline Company of America #308, with emissions of 3,194 NO_X tpy (2011 NEI). In comparison to the emissions of the top three sources, emissions from these two facilities are relatively small. Therefore, we are not proposing controls in this first planning period for these two facilities because we believe it is appropriate to defer the consideration of any additional sources besides Independence to future regional haze planning periods.[126]

Future Fuel Chemical Company, the point source with the fourth highest SO_2 emissions (after White Buff, Independence, and Flint Creek), contributes approximately 4.1% of the total SO_2 point source emissions in the state (3,420 SO_2 tons out of total SO_2 point source emissions of 83,883 SO_2 tons, based on the 2011 NEI). The Natural Gas Pipeline Company of America #308, the point source with the fourth highest NO_X emissions, contributes approximately 5.1% of the total NO_X point source emission in the state 3,194 NO_X tons out of total NO_X point source emissions of 62,984 NO_X tons, based on the 2011 NEI). Based on the much smaller magnitude of these sources' emissions, we determined that the remaining point sources in the state are less likely to be significant contributors to regional haze, and thus did not warrant closer evaluation under reasonable progress in this planning period. As such, we found that it is appropriate to evaluate Independence for controls under reasonable progress. The claim that we arbitrarily singled out Independence and that we provided no explanation as to why we did not evaluate other point sources under reasonable progress is not supported by the record in this action.

Because our examination of the Arkansas emissions inventory revealed that the number of point sources that emit SO_2 and NO_X emissions is relatively small and that a very small portion of the point sources in the state are responsible for a large portion of the statewide SO_2 and NO_X point source emissions, we concluded that photochemical modeling or other more exhaustive analyses that we have performed in other regional haze actions were unnecessary to identify point sources to evaluate under reasonable progress. In contrast, in states such as Texas, where the universe of point sources is much larger and the distribution of SO_2 and NO_X emissions is very widespread, an evaluation of the state's emissions inventory alone was not sufficient to reveal the best potential candidates for evaluation under reasonable progress. For this reason, we explained in our Texas Regional Haze FIP that due to the challenges presented by the geographic distribution and number of sources in Texas, the CAMx photochemical model was best suited for identifying sources to evaluate for reasonable progress controls.[127] We did not encounter these challenges in the development of our reasonable progress analysis for Arkansas and therefore did not conduct photochemical modeling.

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[121] See Arkansas Regional Haze SIP, Appendix 8.1—"Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," sections 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[122] See Arkansas Regional Haze SIP, Appendix 8.1—"Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," section 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[123] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," at 2–3 and 3–1.

[124] 80 FR at 18991.

[125] See NEI 2011 v1. A spreadsheet containing the emissions inventory is found in the docket for our proposed rulemaking.

[126] 80 FR at 18992.

We do note that while we did not conduct photochemical modeling to identify Arkansas point sources to evaluate under reasonable progress, Entergy conducted CAMx source-apportionment modeling and submitted it during the comment period. Entergy's CAMx source apportionment modeling showed that emissions from the Independence facility alone are projected to contribute approximately 1.3% of the total visibility impairment in 2018 on the 20% worst days at each Arkansas Class I area. This is a large portion (approximately one-third) of the total contribution from all Arkansas point sources, and we consider it to be a significant contribution to visibility impairment Arkansas' Class I areas on the 20% worst days. The CAMx modeling also showed that at Upper Buffalo, the Independence facility's contribution to visibility impairment is greater than the contribution from all of the subject-to-BART sources addressed in this final action combined. In terms of deciviews, the average impact from Independence over the 20% worst days, based on Entergy's CAMx modeling and adjusted to natural background conditions, is over 0.5 dv at the Arkansas Class I areas. The results of Entergy's CAMx modeling confirm and provide additional support to our determination that Independence significantly impacts visibility at Arkansas' Class I areas.

Additionally, we note that because of the controls required during this planning period, we expect that the impact from the facilities in Arkansas that were not controlled and not specifically evaluated in the first planning period will become larger on a percentage basis. These sources will become the largest impacting sources and should be considered for analysis under reasonable progress in future planning periods. The methodology we used here thus allows a consistent procedure to identify facilities for additional control analysis in this and future planning periods and ensures continuing progress towards the goal of natural visibility conditions.

To the extent the commenter contends that additional controls under reasonable progress cannot or should not be evaluated or required unless controls beyond BART are needed for Arkansas to be on or below the URP glidepath or to meet the RPGs established by the state (which, in the case of Arkansas, we disapproved in a previous final action), this is incorrect. As we discuss elsewhere in this section of the final rule and in our RTC document, there is nothing in the CAA or Regional Haze regulations that suggests that a State's obligations to ensure reasonable progress can be met simply by being on or below the URP glidepath or meeting the state's RPGs.[128]

Comment: EPA's own analysis counsels against imposing additional controls on the Independence Plant. EPA asserts that CENRAP modeling shows that sulfate from all point sources is projected to contribute to 57% of the total light extinction at Caney Creek on the worst 20% days in 2018 and 43% of the total light extinction at Upper Buffalo. Nitrate from all point sources is projected to account for only 3% of the total light extinction at the Class I areas. However, the CENRAP modeling also projects that sulfate from Arkansas point sources will be responsible for only 3.58% of the total light extinction at Caney Creek and 3.20% at Upper Buffalo. The contribution of nitrate from Arkansas point sources to visibility impairment is even more insignificant, accounting for only 0.29% of the total light extinction at Caney Creek and 0.25% at Upper Buffalo. The Independence Plant's share of emissions to this minimal contribution from Arkansas point sources is even smaller. Despite these very small contributions, EPA's proposal concludes that SO_2 and NO_X controls at the Independence Plant are warranted and reasonable. EPA lacks evidence of a sufficient need to evaluate additional controls for Arkansas point sources and lacks a sufficient basis to justify additional controls.

Response: The commenter appears to believe that the CENRAP modeling shows that the visibility impacts on the 20% worst days from Arkansas point sources, and from Independence in particular, are very small. We disagree that these visibility impacts are insignificant. As we discuss above, Entergy's CAMx source apportionment modeling showed that the contribution to visibility impairment due to emissions from the Independence facility alone are projected to be approximately 1.3% of the total visibility impairment during the 20% worst days in 2018 at each Arkansas Class I area. This is a large portion (approximately one-third) of the total contribution from all Arkansas point sources, and we consider this to be a significant contribution to visibility impairment. Entergy's CAMx modeling also showed that at Upper Buffalo, the Independence facility's contribution to visibility impairment is greater than the contribution from all of the subject-to-BART sources addressed in this final action combined. In terms of deciviews, the average impact from Independence over the 20% worst days, based on Entergy's CAMx modeling and adjusted to natural background conditions, is over 0.5 dv at the Arkansas Class I areas. The results from Entergy's CAMx modeling confirm and provide additional support to our determination that the source significantly impacts visibility at Arkansas' Class I areas and should be evaluated for controls under reasonable progress.

As discussed in our proposal and elsewhere in this final rule, we have found that dry scrubbers for SO_2 control are cost effective and are expected to provide significant visibility improvements to the facility's 98th percentile visibility impacts as shown by our CALPUFF modeling. We have also found that NO_X controls in the form of LNB/SOFA on Independence are very cost effective and are expected to provide considerable visibility improvements to the 98th percentile visibility impacts.

Based on Entergy's CAMx modeling, SO_2 emissions are responsible for a majority of the visibility impacts from Independence on the 20% worst days and NO_X emissions are responsible for 30–40% of the visibility impairment on 2 of the 20% worst days.[129] The controls we are requiring will significantly reduce SO_2 and NO_X emissions from Independence, and accordingly, we expect that they will also significantly reduce the significant visibility impacts from the facility on the 20% worst days. Therefore, we disagree that these controls are not necessary and/or that they would not improve visibility in Arkansas Class I areas. Based on our consideration of the four reasonable progress factors and of the visibility improvement of controls, we are requiring both SO_2 and NO_X controls for Independence Units 1 and 2 under the reasonable progress requirements.

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[127] 81 FR 296.

[128] See 77 FR at 14629.

[129] This means 2 out of the 21 days that are the 20% worst of the days with IMPROVE monitoring data.

Comment: The RPG and URP in the Arkansas Regional Haze SIP should be accepted as presented by the State since ADEQ's Five Year Progress Report SIP revision demonstrates that Arkansas is on track to achieve its RPGs and is below the URP glidepath. EPA's disapproval of the Arkansas Regional Haze SIP submitted to EPA in 2008 was not due to lack of reasonable progress to achieve visibility improvement or for missing the URP. It was disapproved primarily because the underlying emissions were based on presumptive limits and no BART evaluations had been conducted. EPA's proposed FIP and the controls for Independence only serve to achieve greater emissions reductions than in the Arkansas Regional Haze SIP. Therefore, EPA should not look beyond BART eligible units to achieve greater visibility improvements. EPA should not simply use the regional haze program as leverage to impose emissions reductions that have little benefit to the purpose of the rule to improve visibility.

Response: We disagree that we should accept Arkansas' RPGs as presented in the Arkansas Regional Haze SIP submitted to us in 2008. We partially approved and partially disapproved the Arkansas Regional Haze SIP in our final action published on March 12, 2012.[130] In that final action, we disapproved a large portion of the state's BART determinations, as well as the state established RPGs. We disapproved the state's RPGs because they were based on BART determinations that were not made in accordance with the CAA and Regional Haze regulations and also because in establishing the RPGs, the state did not conduct the reasonable progress analysis required under the CAA and § 51.308(d)(1). As discussed in a separate response, the state decided to forego an evaluation of the four statutory factors, stating that there was no need for such an evaluation since Arkansas' Class I areas are below the URP glidepath. In foregoing the reasonable progress analysis, the state did not demonstrate that the RPGs it established were a reflection of the amount of visibility improvement necessary to make reasonable progress. Our final action disapproving Arkansas' RPGs for Caney Creek and Upper Buffalo became effective on April 11, 2012. Any arguments upholding or suggesting that the state's RPGs are appropriate or adequate are outside the scope of this action.

Under section 110(c) of the Act, whenever we disapprove a mandatory SIP submission in whole or in part, we are required to promulgate a FIP within two years unless we approve a SIP revision correcting the deficiencies before promulgating a FIP. To date, Arkansas has not submitted a SIP revision following our partial disapproval, and EPA is already past-due on its action per the statutory deadlines. In addition, EPA is under an August 31, 2016 court ordered deadline to either finalize a FIP or approve a SIP to address the regional haze requirements and the interstate visibility transport requirements. Therefore, the purpose of our FIP is to correct the deficiencies in the SIP and conduct the required analyses and establish emission limits in accordance with the CAA and the Regional Haze Rule. One of the required analyses we must conduct in this FIP is the consideration of the four statutory factors to determine if additional controls are needed to make reasonable progress. We discuss in a separate response that the reasonable progress requirements under CAA section 169A(g)(1) and our Regional Haze regulations at § 51.308(d)(1) cannot be satisfied by merely being below the URP glidepath and/or meeting the RPGs previously established by the state. The states or EPA in a FIP must conduct an analysis of the four statutory factors regardless of the Class I area's position on the URP glidepath. Based on our consideration of the four statutory factors and of the baseline visibility impacts from Independence and the visibility improvement of potential controls, we determined that reasonable controls for SO_2 and NO_X are available for Independence Units 1 and 2 that are cost effective and would result in a large amount of visibility improvement in Arkansas' Class I areas in terms of the 98th percentile impacts from the source. Additionally, as we discuss in section V.J of this final rule, CAMx source apportionment modeling submitted to us by Entergy during the comment period shows that Independence has significant visibility impacts in Arkansas' Class I areas on the 20% worst days, and further supports our decision to require controls for Independence under reasonable progress. Therefore, the claim that the SO_2 and NO_X controls we are requiring for Independence Units 1 and 2 only serve to achieve greater emissions reductions that have little benefit to the purpose of the Regional Haze Rule to improve visibility are incorrect. Because we have identified through our reasonable progress analysis that additional controls are reasonable, we are requiring these controls for Independence Units 1 and 2. We address elsewhere in this final rule and in the RTC document comments related to ADEQ's 5-year Progress Report SIP revision.

Comment: EPA's imposition of costly controls on BART-ineligible sources like the Independence plant, based only on what it claims is "reasonable," is economically wasteful and effectively re-writes the definition of what sources are BART eligible. Under the regional haze program, BART controls may be imposed on (1) major stationary sources in 26 listed categories, (2) that existed on August 7, 1977, (3) but were not in operation prior to August 7, 1962, and (4) emit air pollutants "which may reasonably be anticipated to cause or contribute to any impairment of visibility" at Class I areas. Under the proposed rule, the first three of these statutory and regulatory criteria would be rendered a nullity. According to EPA, it may impose BART controls on any facility, regardless of when it was built or when it began operating, so long as EPA determines it to be "reasonable." EPA has effectively adopted a presumption that at least some BART-ineligible sources should be subject to BART unless those pollution controls are cost prohibitive. Such a presumption ignores the statute and re-writes EPA's own regulations.

Response: We are requiring controls on Independence under the reasonable progress requirements, not under the BART requirements. Clean Air Act section 169A required us to promulgate regulations directing the States to revise their SIPs to include emission limits and other measures as necessary to make "reasonable progress." [131] Congress defined reasonable progress based on the consideration of four statutory factors: The costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.[132] We commonly refer to our analysis of these four statutory factors as a reasonable progress analysis. Congress also directed EPA to promulgate regulations requiring BART for a specific universe of older sources, and again provided a set of statutory factors States must consider: The costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.[133] We note that many of the factors that must be considered in a BART analysis must also be considered in the reasonable progress analysis. Therefore, some commenters may mistakenly believe that we are somehow stretching the BART analysis to impose BART controls on Independence Units 1 and 2. This is not the case. As discussed in our proposal and elsewhere in this final rule, in our reasonable progress analysis, we considered the reasonable progress statutory factors as well as the visibility improvement of potential controls. Although visibility is not one of the four mandatory factors explicitly listed for consideration under CAA section 169A(g)(1) or 40 CFR 51.308(d)(1)(i)(A), states and EPA have the option of considering the projected visibility benefits of controls in determining if the controls are necessary to make reasonable progress. We discuss this in more detail in our proposal and in our RTC document. Based on our analysis of the four statutory factors and consideration of the visibility improvement of controls, we have determined that there are SO_2 and NO_X controls available for Independence Units 1 and 2 that are cost-effective and would result in considerable visibility benefit at Arkansas' Class I areas, and are therefore requiring these controls under reasonable progress.

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[130] 77 FR 14604.

[131] CAA section 169A(b)(2).

[132] CAA section 169A(g)(1).

To the extent the commenter believes that we treated the Independence Plant as if it were subject to BART in performing a source-specific reasonable progress analysis, this is incorrect. As we discuss elsewhere in this section of the final rule, individual stationary sources may be subject to source-specific analysis when determining whether additional controls are necessary to make reasonable progress. To the extent the commenter believes that only sources subject to BART can be looked to for emission reductions to promote reasonable progress, this is incorrect. If that were the case, then States, or EPA acting as necessary in the place of a State, would have little to no room for additional progress and even less need for sequential planning periods to build on past progress.

Comment: Some commenters claim that we inappropriately took a "cut and paste" approach in estimating the cost of controls for Independence in our reasonable progress analysis.

Response: We explained in our FIP proposal that White Bluff and Independence are sister facilities with nearly identical units. We explained that we verified that the two plants are sister facilities by constructing a master spreadsheet that contains information concerning ownership, location, boiler type, environmental controls, and other pertinent information.[134] The cost of compliance is a factor that is required for consideration under both a BART and a reasonable progress analysis. Due to the similarities in the facilities and the identical requirement for consideration of the cost of controls under reasonable progress and BART, our use of the total annualized costs of controls on White Bluff Units 1 and 2 in our cost analysis for Independence Units 1 and 2 was a reasonable approach. We do note that we used actual emissions data from Independence Units 1 and 2 to estimate the emission reductions expected to take place from the controls we evaluated and to calculate the cost effectiveness ($/ton removed) of controls for Independence Units 1 and 2. Thus, the total annual cost of controls on Independence was the only aspect of our reasonable progress analysis where we relied on our cost analysis for White Bluff. Our consideration of the remaining reasonable progress factors (time necessary for compliance, energy and nonair quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources), as well as the visibility impacts of Independence and improvement due to controls on the facility, was specific to the Independence facility.[135] We modeled both the baseline visibility impacts from the Independence facility and the visibility benefit of controls using CALPUFF dispersion modeling. Based on our consideration of the four reasonable progress factors and the modeled visibility improvement of controls, we determined that reasonable controls for SO_2 and NO_X are available for Independence Units 1 and 2 that are cost effective and would result in a large amount of visibility improvement in Arkansas' Class I areas in terms of the 98th percentile impacts from the source.[136]

Comment: The CAA's regional haze program tasks states with making reasonable progress toward the elimination of man-made visibility impairment, for which EPA has set a goal of 2064 with required progress milestones. Accordingly, the CAA's regional haze program contemplates gradual visibility improvements along a "glide path" toward the 2064 goal. This program does not require immediate and costly reductions in the first planning period or any subsequent planning period that go beyond what is needed to make "reasonable progress," as determined by a state based on its assessment of the four statutory factors. Thus, it neither requires nor authorizes the front-loading of extensive control requirements. Delaying consideration of controls on Independence until the next planning period is a more reasonable approach that would allow for the consideration of updated information, such as control equipment characteristics and costs, emissions reductions attributable to other regulatory and market drivers, and contemporaneous monitoring and meteorological conditions, which would allow the coordination of these important investment and regulatory decisions with the implementation of other pending regulations. This approach would also give states and regulated entities the opportunity to conduct integrated compliance planning in ways that are consistent with provision of reliable and affordable electric power. EPA should withdraw its proposed controls for Independence Units 1 and 2.

Response: We agree that the regional haze program contemplates gradual visibility improvements over several planning periods. Those gradual improvements are guided by the principle that controls found to be reasonable in a given planning period should be required now, rather than in some unspecified future planning period. That is the very nature of "reasonable progress." For that reason, we do not consider the controls we proposed and those we finalize in this action as being frontloading. As we discuss in several sections throughout this final rule, our cost analysis indicates that the SO_2 and NO_X controls we are requiring for Independence Units 1 and 2 are cost effective and well within the range of cost of controls found to be reasonable by EPA and the states in other regional haze actions for this first planning period. Arkansas did not comply with certain aspects of the Regional Haze Rule and thus portions of its Regional Haze SIP submitted to us in 2008 were not approvable, including the state's reasonable progress determinations and RPGs.[137] We therefore have an obligation to promulgate this FIP to address the disapproved portions of the State's SIP submission. Pursuant to CAA section 169A(g)(1) and our Regional Haze regulations at § 51.308(d)(i)(A), we conducted an evaluation of additional controls under a reasonable progress analysis that considered the four statutory factors. As discussed in our proposal and throughout this final rule, based on the demonstrations we developed pursuant to the CAA and § 51.308(d)(1) and our consideration of the visibility impacts from Independence and the visibility improvement of potential controls, we determined that there are reasonable and cost-effective SO_2 and NO_X controls available for Independence that would result in considerable visibility benefit at Arkansas' Class I areas. Under the CAA and the Regional Haze regulations, if we determine that additional controls are reasonable based on the consideration of the four statutory factors, we must require those controls. Therefore, we are requiring SO_2 and NO_X controls for Independence Units 1 and 2 under reasonable progress.

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[133] CAA section 169A(b)(2)(A), (g)(2).

[134] 80 FR at 18992.

[135] 80 FR at 18996.

[136] Entergy Arkansas Inc. submitted CAMx source apportionment modeling during the comment period. This modeling shows that Independence has significant visibility impacts in Arkansas Class I areas on the 20% worst days, and further supports our decision to require controls for Independence under reasonable progress. We discuss Entergy Arkansas Inc.'s photochemical modeling and the visibility impacts due to SO_2 and NO_X from Independence on the 20% worst days elsewhere in this final rule and in our RTC document.

Comment: EPA applied dollar per ton cost-effectiveness estimates and visibility improvement rates for the proposed controls on Independence that are out of line with the standards applied in other regional haze actions. Specifically, EPA's proposal attempts to justify a cost-effectiveness of dry FGD at Independence Plant totaling \$2,477/SO_2 ton removed for Unit 1 and \$2,686/SO_2 ton removed for Unit 2. This far exceeds the cost-effectiveness standards reviewed and approved by EPA for the Kentucky[138] and North Carolina Regional Haze SIPs.[139] In its approval of the Kentucky Regional Haze SIP, EPA approved the use of a \$2,000 per ton SO_2 screening threshold. In its approval of the North Carolina Regional Haze SIP, EPA approved the state's decision not to implement additional controls under reasonable progress despite the finding that there are potential controls with cost effectiveness ranging from \$912 to \$1,922 per ton of SO_2 removed. EPA's proposed controls for Independence are inconsistent with these other regional haze actions.

Response: In response to comments we received during the comment period, we have revised our cost analysis for SO_2 controls for Independence and estimate that these controls cost \$2,853/SO_2 ton removed for Unit 1 and \$2,634/SO_2 ton removed for Unit 2. Although slightly higher than the cost effectiveness estimates we presented in our proposal, we continue to consider these controls to be cost effective and well within the range of cost of controls found to be reasonable by EPA and the states in other regional haze actions. We disagree with the statement that our proposal to require SO_2 controls for Independence is inconsistent with our approvals of the Kentucky and North Carolina Regional Haze SIPs. Additionally, the factual contexts of both of these actions are easily distinguished from context in which we assessed potential reasonable progress controls for Independence.

The commenter contends that in our proposed approval of the Kentucky Regional Haze SIP, we approved the state's use of a \$2,000/SO_2 ton threshold. This is incorrect. In the preamble of our proposed approval of the Kentucky Regional Haze SIP, we discussed that the state identified 10 units for evaluation under reasonable progress, and that 9 of these were EGUs subject to CAIR. The remaining facility, Century Aluminum, is not an EGU. We further discussed that for the limited purpose of evaluating the cost of compliance for the reasonable progress assessment in this first regional haze SIP for the non-EGU Century Aluminum, Kentucky concluded that it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy. As a result, Kentucky decided to use CAIR as a guide, using a cost of \$2,000/ton of SO_2 reduced as a threshold for cost-effectiveness for that particular non-EGU source. Kentucky found that the cost effectiveness of the SO_2 control as suggested by the VISTAS control cost spreadsheet for potlines 1–4 at Century Aluminum is \$14,207/ton of SO_2 removed. The State thus concluded that, based on the high cost on a \$/ton basis, there are no cost-effective SO_2 reasonable progress controls available for the Century Aluminum units for the first implementation period. We proposed to approve Kentucky's determination, but we also stated the following concerning our position on Kentucky's use of a \$2,000/SO_2 ton threshold:

> Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the Kentucky SIP still ensures reasonable progress. In proposing to approve Kentucky's reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP submittal that Kentucky, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I area.[140]

It is clear in our proposed approval that we were not approving or otherwise advocating Kentucky's use of a \$2,000/SO_2 ton threshold in the reasonable progress analysis. On the contrary, we expressed concern that the use of a specific threshold for assessing cost may result in a state not fully considering potential reasonable control measures above that threshold that would have meaningful visibility improvement on its Class I areas. Furthermore, our statements in the proposal indicate that had there been evidence of more affordable controls available above the \$2,000/SO_2 ton threshold used by the state that provide meaningful visibility improvement at the Class I areas, we might have arrived at a different decision concerning the approvability of Kentucky's reasonable progress analysis for SO_2.

North Carolina took a similar approach to that of Kentucky in its SO_2 reasonable progress analysis by relying on a cost threshold when deciding on measures for its non-EGUs. North Carolina set this threshold based on the estimated cost of compliance with its Clean Smokestacks Act, a law establishing a state-wide cap on SO_2 and NO_X emissions from the State's two major utilities. In our proposed approval of the North Carolina Regional Haze SIP, we discussed that the state identified 11 units (non-EGU) for evaluation. We noted that North Carolina decided that for the limited purpose of evaluating the cost of compliance for non-EGUs in the SO_2 reasonable progress assessment for the first implementation period, it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy and therefore also used a cost-effectiveness threshold for its non-EGUs. North Carolina's threshold was based on "[t]he facility-by-facility cost for EGUs under [the Clean Smokestacks Act which] ranged from 912 to 1,922 dollars per ton of SO_2 removed," a statement which the commenters appear to have misinterpreted to mean that North

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[137] 77 FR 14604.

[138] 76 FR 78194, 78206 (December 16, 2011).

[139] 77 FR 11858, 11870 (February 28, 2012).

[140] 76 FR at 78206.

Carolina rejected potential reasonable progress measures with costs falling within this range.[141] Rather, upon conducting cost evaluations for the non-EGUs and determining that the costs of controls exceeded its threshold, North Carolina concluded that there were no cost-effective reasonable progress SO_2 controls available for the first implementation period. We proposed to approve North Carolina's determination, but we also stated the following concerning our position on North Carolina's use of a specific cost-effectiveness threshold:

> Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the North Carolina SIP still ensures reasonable progress. In proposing to approve North Carolina's reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP submittal that North Carolina, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I areas.[142]

As in the case of Kentucky, it is clear that in our proposed approval of North Carolina's reasonable progress determination, we were not approving or otherwise advocating North Carolina's use of that specific cost-effectiveness threshold in the reasonable progress analysis. Therefore, we disagree that our requirement of SO_2 controls for Independence Units 1 and 2 under reasonable progress is inconsistent with our actions on the Kentucky and North Carolina Regional Haze SIPs.

Comment: EPA's decision to evaluate and propose NO_X controls at the Independence Plant stands completely opposite its decision not to even evaluate similar controls for Texas' point sources despite similar visibility conditions. EPA elected not to evaluate Texas point sources for NO_X controls because modeling suggested that impacts from the sources on the 20% worst days were "primarily due to sulfate emissions." [143] In Arkansas, EPA was even more explicit in stating that "visibility impairment is not projected to be significantly impacted by nitrate on the 20% worst days at Caney Creek or Upper Buffalo." [144] However, the agency nevertheless evaluated and proposed NO_X controls for the Independence Plant Units 1 and 2. The arbitrary nature of this aspect of EPA's proposal is further evidenced by the low projection for anticipated visibility improvement due to the NO_X controls. For instance, EPA rejected installation of SCR controls under reasonable progress where it was projected to result in 0.41 dv improvement at affected Class I areas in the Arizona Regional Haze FIP proposal, whereas it is proposing to require NO_X controls on Independence that are projected to result in visibility improvement of 0.461 dv in the Arkansas Regional Haze FIP proposal.

Response: This comment, and our response to it, illustrate the very fact-specific nature of individual evaluations and decisions under the regional haze program. It is critical to understand the full context of each decision. In each one, the EPA applies the requirements of the statute and regulations in a consistent manner, but the different facts—unique to each state and facility—inevitably lead to different outcomes. We agree that in our Texas FIP action we noted that on the 20% worst days, the impacts from the EGUs we evaluated under reasonable progress were primarily due to sulfate emissions. We also agree that in our Arkansas FIP proposal we acknowledged that the CENRAP modeling demonstrates that sulfate is the primary driver of regional haze in Arkansas' Class I areas on the 20% worst days. This does not mean that NO_X is not a key pollutant contributing to regional haze impairment in both states. For instance, the CENRAP CAMx modeling shows that total extinction at Caney Creek is dominated by nitrate on 4 of the days that comprise the 20% worst days in 2002, and a significant portion of the total extinction at Upper Buffalo on 2 of the days that comprise the 20% worst days in 2002 is due to nitrate.[145]

As a key pollutant, we considered NO_X controls under reasonable progress in both Texas and Arkansas. In our Texas FIP, we considered NO_X controls under reasonable progress for the Works No. 4 Glass Plant but ultimately did not require those controls based on the emission reductions already occurring at the facility, the anticipated lifetime of the furnaces, and the fact that Furnace No. 2 had undergone rebricking within the past few years. Although we determined it was reasonable to not require additional controls for Works No. 4 Glass Plant at this time, we encouraged Texas to consider additional controls when Furnace No. 2 is scheduled for its next rebricking. We also found that in Texas all the EGUs that we evaluated for controls under reasonable progress had existing LNB for control of NO_X emissions. This is in contrast to Independence, which is the second largest source of NO_X point source emissions in Arkansas and is not currently equipped with any NO_X controls. As such, Independence was a more compelling candidate for evaluation of NO_X controls than were the EGUs in Texas that we evaluated for controls under reasonable progress.

As NO_X is a visibility impairing pollutant and Independence is responsible for a very large portion of the point source NO_X emissions in the state (approximately 21.3%),[146] we determined that it was reasonable to evaluate NO_X controls under reasonable progress in our Arkansas FIP proposal. We conducted CALPUFF modeling and found that the Independence Plant has significant visibility impacts in Arkansas' Class I areas due to NO_X emissions based on the 98th percentile visibility impacts from the facility, and also found that LNB/SOFA would improve these visibility impacts.[147] We also found that LNB/SOFA is very cost effective ($401/ton removed for Unit 1 and $436/ton removed for Unit 2). For these reasons, we proposed LNB/SOFA for Independence Units 1 and 2 under Option 1. In addition, we discuss in more detail elsewhere in this final rule and in our RTC document that Entergy submitted CAMx photochemical modeling during the public comment period showing that nitrate from Independence is responsible for 30–40% of the visibility impairment in Arkansas' Class I areas on 2 out of the 20% worst days in 2018. We expect that the installation of NO_X controls at Independence, which we found to be very cost effective, would provide visibility improvement on this portion of the 20% worst days, thereby assuring reasonable progress toward the goal of natural visibility conditions. Based on our consideration of the four statutory factors and the visibility improvement available from controls, we have determined that there are reasonable NO_X controls available for Independence that are cost effective and would result in considerable visibility improvement. Therefore, we are requiring these controls.

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[141] 77 FR at 11870.

[142] 77 FR 11858, 11872.

[143] 79 FR 74818, 74873 (December 16, 2014).

[144] 80 FR at 18966.

[145] See Arkansas Regional Haze SIP, Appendix 8.1— "Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," section 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[146] See NEI 2011 v1. A spreadsheet containing the emissions inventory is found in the docket for our proposed rulemaking.

[147] Although the reasonable progress provisions of the Regional Haze Rule place emphasis on the 20% worst days, the CAA goal of remedying visibility impairment due to anthropogenic emissions encompasses all days. Thus, states and EPA have the discretion to consider the visibility impacts of sources and the visibility benefit of controls on days other than the 20% worst days in making their decisions, such as the days on which a given facility has its own largest (98th percentile) impacts. Because Independence has significant 98th percentile visibility impacts, these impacts will need to be addressed to achieve the CAA goal of remedying visibility impairment due to anthropogenic emissions.

We disagree that our decision to require NO_X controls for Independence is inconsistent with our Arizona FIP proposal. In that action, we proposed that neither SCR nor SNCR was required to achieve reasonable progress for Springerville Units 1 and 2 in this regional haze planning period because:

> [w]hile the cost per ton for SNCR may be reasonable, the projected visibility benefits are relatively small (0.18 dv at the most affected area). The projected visibility benefits of SCR are larger (0.41 dv at the most affected area), but we do not consider them sufficient to warrant the relatively high cost of controls for purposes of RP in this planning period. However, these units should be considered for additional NO_X controls in future planning periods.[148]

The "relatively high cost" of SCR controls we refer to in that statement is $6,829/ton NO_X removed for Springerville Unit 1 and $6,085/ton NO_X removed for Springerville Units 2.[149] Thus, our decision to not propose SCR at Springerville Units 1 and 2 was not because we considered the visibility benefits to be too small, as the commenter appears to believe. Instead, it was because we determined that, under these circumstances, this level of visibility improvement was not sufficient to warrant the cost per ton of emissions reduced. In contrast, we found that the cost of LNB/SOFA at Independence Units 1 and 2 is significantly lower ($401/ton removed for Unit 1 and $436/ton removed for Unit 2), and we determined that 0.459 dv visibility improvement on a facility wide basis warranted the cost of these controls. Therefore, we disagree that the NO_X controls we proposed and are finalizing in this action for Independence Units 1 and 2 in any way contradict our proposed Arizona Regional Haze FIP.

Comment: The overarching requirement of the CAA's haze provisions is for each state's plan to include "emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress." CAA section 169A(b)(2). The statute defines reasonable progress to account for four factors: The cost of controls, the time needed to install controls, energy and nonair quality environmental impacts of controls, and the remaining useful life of the source. CAA section 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A). EPA's implementing regulations require each state with a Class I area to set an RPG for each area within its borders based on considering the four statutory factors for reasonable progress. Each state must also determine the uniform rate of progress. If a state sets a reasonable progress goal that provides for less progress than the URP, the state must demonstrate that achieving the URP is unreasonable and that its alternative goal is reasonable. Moreover, each state must consult with other states that contribute to haze in the host state's Class I areas. Neither the statute nor the regulations exempts states from the required reasonable progress analysis merely because a Class I area is on the glidepath to achieving the URP. To the contrary, EPA's long-standing interpretation of the regional haze rule is that "the URP does not establish a 'safe harbor' for the state in setting its progress goals."[150] If it is reasonable to make more progress than the URP, a state must do so, as EPA explained in the 1999 Regional Haze Rule.[151] Having disapproved Arkansas' regional haze plan, EPA has an obligation to conduct a reasonable progress analysis for Caney Creek and Upper Buffalo based on a consideration of the four statutory factors for reasonable progress. 40 CFR 51.308(d)(1).

Response: We agree with this comment with regard to our obligation to conduct a reasonable progress analysis for sources in Arkansas regardless of the Class I areas' position on the URP glidepath.

D. Control Levels and Emission Limits

Comment: Assuming EPA proceeds with BART for the Ashdown Mill, EPA should revise the proposed SO_2 limit for Power Boiler 2 from 0.11 lb/MMBTU to 155 lb/hr on a 30-day boiler operating day. There are a number of concerns with EPA's proposed limit of 0.11 lb/MMBTU: It is too stringent, it is based on the use of an inappropriate baseline (2011–2013), and assumes the existing control equipment can continuously operate at the upper range of its capability (90% efficiency) over long periods of time, without supporting data or other documentation. First, in the methodology to calculate the proposed BART limit, EPA used data from 2011–2013 for determining the proposed BART limit, instead of using 2001–2003 as the baseline. No justification is given for not using 2001–2003 as the baseline, or why the particular years EPA selected are better than the BART baseline years or legally appropriate. Deviating from the 2001–2003 BART baseline is appropriate if significant changes were made to the emission units or permit conditions were imposed that prevent a unit from operating at the BART baseline emission value. However, this is not the case for Power Boiler 2. The BART 2001–2003 baseline information is representative of Power Boiler 2's potential operations. The fact that the Ashdown Mill voluntarily elected to operate at a lower SO_2 level subsequent to the 2001–2003 baseline period is not relevant. Moreover, by not utilizing the BART 2001–2003 baseline actual emissions in establishing the proposed BART SO_2 limit, EPA penalizes the Ashdown Mill for its voluntary SO_2 emission reductions undertaken on its own initiative since the BART baseline period. Here, the mill voluntarily reduced SO_2 emissions by over 40% since the BART baseline years prior to the proposed BART requirements. Using the actual emission data from the BART baseline period of 2001–2003, gives the mill credit for its early voluntary action. Second, EPA wrongly applied the maximum rated heat input capacity of 820 MMBTU/hr when it converted from a lb/hr limit to a lb/MMBTU limit. The use of the maximum heat input rating is not representative of average (typical) boiler operating conditions, which are lower than the maximum heat input capability. The actual average heat input during the 2001–2003 baseline period is 586 MMBTU/hr. In this situation, the use of actual emission data and maximum rated heat input to calculate the proposed SO_2 BART limit is inappropriate and an inaccurate methodology which creates significant concerns. EPA should instead establish an SO_2 emission limit in terms of lb/hr. Third, based on monthly SO_2 information for the 2011–2013 period, EPA estimated that the SO_2 control efficiency for the existing scrubber on Power Boiler 2 to be approximately 69% and that the existing scrubber may achieve on a short-term basis an SO_2 control efficiency of 90%. However, there is no documentation showing that the scrubber can sustain this maximum performance level on a long term basis. EPA should revise the methodology for calculating the SO_2 BART emission limit for Power Boiler No. 2 by using 2001–2003 actual emissions as the baseline; assuming the existing scrubbers operated at a 69% control efficiency during the 2001–2003 baseline period; calculating an SO_2 emission limit in lb/hr based on 2001–2003 baseline actual emissions and a 90% control efficiency. Based on this approach, EPA should revise the proposed SO_2 limit for Power Boiler 2 from 0.11 lb/MMBTU to 155 lb/hr on a 30-day boiler operating day.

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[148] 79 FR 9318, 9360 (February 18, 2014).

[149] 79 FR 9318, 9359.

[150] 79 FR 74818, 74834.

[151] 64 FR at 35714, 35732.

Response: We disagree that an emission limit of in an emission limit of 155 lb/hr on a 30 boiler-operating-day satisfies the SO_2 BART requirement for Power Boiler No. 2. As discussed in our proposal, we requested information from the facility to determine if upgrades to the existing scrubbers are technically feasible and if they would be cost effective and provide meaningful visibility benefit. This assessment first required us to determine the current control efficiency of the scrubbers. Because our BART analysis involved determining the current control efficiency of the existing scrubbers, we found that the most reasonable approach was to use data that reflect the current control efficiency of the existing scrubbers, as opposed to 2001–2003 data. In order to conduct our BART analysis, we requested monthly average data for 2011, 2012, and 2013 on monitored SO_2 emissions from Power Boiler No. 2, mass of the fuel burned for each fuel type, and the percent sulfur content of each fuel type burned.[152] These were the three most recent full calendar years of data available at the time we conducted our BART analysis. For these reasons, our use of 2011–2013 as the baseline for calculating the current control efficiency of the existing scrubbers and our proposed SO_2 BART limit for Power Boiler No. 2 was appropriate and justified. As discussed in detail in our proposal, based on the emissions data and fuel usage data Domtar provided to us, we estimated that the current control efficiency of the existing scrubbers is approximately 69% based on 2011–2013 data.[153] The data also indicated that the existing scrubbers could achieve up to 90% removal efficiency. As discussed in our proposal, Domtar indicated that the scrubbers are currently operated in a manner that allows for compliance with permitted emission limits.[154] In other words, the facility generally uses only the amount of scrubbing solution needed to comply with permitted emission limits. The information the facility provided indicated that it would be possible to add more scrubbing solution to achieve greater SO_2 removal than required to meet the boiler's existing SO_2 permit limit; specifically, the information indicated that additional scrubbing reagent can be added to increase the control efficiency of the existing scrubbers to 90%.[155]

We agree that we applied the boiler's maximum heat input rating of 820 MMBtu/hr when we calculated our proposed limit of 0.11 lb/MMBtu, and based on information provided by the commenter, we acknowledge that use of the maximum heat input rating is not representative of average (typical) boiler operating conditions. To address the commenter's concern, we are finalizing an SO_2 BART limit for Power Boiler No. 2 in terms of lb/hr. As we discussed in our proposal, based on the emissions data we obtained from Domtar, we determined that the No. 2 Power Boiler's annual average SO_2 emission rate for the years 2011–2013 was 280.9 lb/hr.[156] This annual average SO_2 emission rate corresponds to the operation of the scrubbers at a 69% removal efficiency. We also estimated that 100% uncontrolled emissions would correspond to an emission rate of approximately 915 lb/hr. Application of 90% control to this emission rate results in a controlled emission rate of 91.5 lb/hr.[157] We recognize that the boiler's SO_2 emissions are currently lower than they were in the 2001–2003 period, and that had we used 2001–2003 data to calculate the current control efficiency and SO_2 BART emission limit, as the commenter requests, this would have resulted in a less stringent emission limit. However, as discussed above, the most reasonable approach is to use recent data in our calculation of an appropriate SO_2 BART emission limit. As Domtar is requesting an emission limit in terms of lb/hr, we are finalizing for SO_2 BART for Power Boiler No. 2 an emission limit of 91.5 lb/hr on a 30 boiler operating day. We believe this emission limit reflects operation of the scrubbers at 90% control efficiency and addresses the SO_2 BART requirement for Power Boiler No. 2.

We believe it reasonable to set the emission limit using baseline emissions resulting from recent/current fuels. Given that we don't find it appropriate to use emissions from the 2001–2003 period to calculate the SO_2 emission limit, the control efficiency from that period is irrelevant. What is relevant are the current uncontrolled SO_2 emissions and the possible control efficiency of the existing scrubbers, which is what we considered in our BART analysis. We found in our analysis that during the 2011–2013 period, the company was able to achieve an average monthly control efficiency of 90% and find that this level of control is reasonable, and can be achieved by the use of sufficient reagent to achieve the lower level. We also note that the commenter did not provide additional information to support the claim that the existing scrubbers cannot consistently achieve the level of control efficiency necessary to meet an emission limit of 91.5 lb/hr.

Comment: The NO_X emission limits proposed for the units at White Bluff and Independence are based on the emission rate for LNB/SOFA of 0.15 lb/MMBtu that Entergy proposed in the Revised White Bluff BART Analysis. At the time Entergy submitted the Revised White Bluff BART Analysis in October 2013, which EPA relied on in developing its FIP proposal, all four of the coal-fired units at White Bluff and Independence were operated as base load units and spent the overwhelming majority of their operating time at loads of greater than 50% of unit capacity. Since submitting the Revised White Bluff BART Analysis, Entergy transitioned to MISO in December 2013. MISO utilizes an economic dispatch model to determine which EGUs within its service territory are dispatched to operate and the operating load (MW) for each unit. Beginning in December 2014, the units at both White Bluff and Independence began to be dispatched primarily as load-following units. Since December 2014, the White Bluff and Independence units have been dispatched less frequently and, when dispatched, have spent significantly more time at low operating rates of less than 50% of unit capacity. The data for 2015 (through June 30) reflects a significant increase in the percentage of time that each unit is dispatched at less than 50% of operating capacity. Three of the four units have spent greater than 40% of their 2015 operating hours at less than 50% of capacity, and the two Independence units have spent nearly half of their operating time at less than 50% of capacity. This change in dispatch coincided with a sharp drop in natural gas prices. This drop in gas prices to near $3 per MMBtu has been sustained since December 2014, and Entergy has no reason to expect any significant increase in gas pricing in the near future. This change in dispatch for the units at both White Bluff and Independence is significant with regard to $\mathrm{NO_X}$ emissions as the LNB/SOFA system is designed to operate primarily in the range of 50–100% of unit load. Entergy has selected Foster Wheeler as the LNB/SOFA vendor for White Bluff and has only been able to obtain a guarantee of less than 0.15 lb/MMBtu for operating loads in the range of 50–100% of unit capacity. Since the available emission guarantee does not cover unit operation at less than 50% of capacity, Entergy requested a memorandum from Foster Wheeler regarding the impact of unit operation at less than 50% capacity on $\mathrm{NO_X}$ emission rates. Based on input from the LNB/SOFA vendor, Entergy does not believe that the proposed emission rate of 0.15 lb/MMBtu is consistently achievable under all operating conditions. Even with a 30-day averaging period for the proposed limit, a unit which is frequently dispatched at less than 50% of capacity may not be able to achieve compliance. This was not perceived as an issue at the time that the Revised White Bluff BART Analysis was prepared and submitted to ADEQ by Entergy as, historically and at that time, the units were operated almost exclusively as base-load units and spent less than 10% of their operating time at less than 50% of unit capacity. In the current dispatch environment, with some units spending nearly 50% of their operating time outside of the control range for LNB/SOFA, Entergy can no longer be confident that the units will be able to achieve compliance with a limit of 0.15 lb/MMBtu on a 30-day rolling average basis. The concern arises from low-load operation during which periods of higher $\mathrm{NO_X}$ emissions, on a lb/MMBtu basis, would not be expected to correspond to an increase in the maximum mass emission rate (lb/hr) from the units as any increase in the emission rate on a lb/MMBtu basis would be expected to be more than offset by the lower unit operating rate in MMBtu/hr to arrive at a mass emission rate (lb/hr).

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[152] See 80 FR at 18984. See also August 29, 2014 letter from Annabeth Reitter, Corporate Manager of Environmental Regulation, Domtar, to Dayana Medina, U.S. EPA Region 6. A copy of this letter and an Excel file attachment titled "Domtar 2PB Monthly SO_2 Data," are found in the docket for our proposed rulemaking.

[153] See 80 FR at 18984. See also the spreadsheet titled "Domtar 2PB Monthly SO_2 Data." This spreadsheet was included as an attachment to the August 29, 2014 letter from Annabeth Reitter, Corporate Manager of Environmental Regulation, Domtar, to Dayana Medina, U.S. EPA Region 6. See also the spreadsheet titled "Domtar PB No2—Cost Effectiveness calculations." Copies of these documents can be found in the docket for this proposed rulemaking.

[154] 80 FR at 18983, 18984.

[155] 80 FR at 18984.

[156] See 80 FR at 18984. See also the spreadsheet titled "Domtar 2PB Monthly SO_2 Data." This spreadsheet was included as an attachment to the August 29, 2014 letter from Annabeth Reitter, Corporate Manager of Environmental Regulation, Domtar, to Dayana Medina, U.S. EPA Region 6. See also the spreadsheet titled "No2 Boiler_Monthly Avg SO_2 emission rate and calculations." Copies of these documents can be found in the docket for our rulemaking.

[157] See 80 FR at 18984. See also the spreadsheet titled "No2 Boiler Monthly Avg SO_2 emission rate and calculations." A copy of this spreadsheet can be found in the docket for our rulemaking.

To address the potential for a higher $\mathrm{NO_X}$ emission rate (lb/MMBtu basis) at operating rates of less than 50% of unit capacity, Entergy proposes a rolling 30-boiler operating day average emission rate of 1,342.5 lb $\mathrm{NO_X}$/hr at each coal-fired unit at White Bluff and Independence. In the alternative, if EPA believes that a lb/MMBtu limit is necessary for the units, Entergy proposes a bifurcated $\mathrm{NO_X}$ emission limit for each unit at both White Bluff and Independence as follows: (1) For all unit operation (0–100% of capacity) require an emission limit of 1,342.5 lb $\mathrm{NO_X}$/hr, based on a rolling 30-boiler operating day average; and (2) for unit operation at 50–100% of capacity, require an emission limit of 0.15 lb $\mathrm{NO_X}$/MMBtu, based on a rolling 30-boiler operating day average, to include only those hours for which the unit was dispatched at 50% or greater of maximum capacity. This alternative approach would ensure that the units are operated in compliance with the LNB/SOFA design within the control range of 50–100% of capacity while providing Entergy with flexibility in demonstrating compliance. The lb/hr limit, which would apply to all operating hours, will ensure that the 30-day average emission rates remain below those on which both EPA and Entergy relied to project visibility improvements from the proposed $\mathrm{NO_X}$ emission reductions.

Response: We acknowledge the information provided by the commenter. We understand the commenter's concerns that because of recent changes in dispatch of the units, White Bluff Units 1 and 2 and Independence Units 1 and 2 are no longer expected to be able to consistently meet our proposed $\mathrm{NO_X}$ emission limit of 0.15 lb/MMBtu over a 30-boiler-operating-day period based on LNB/SOFA controls. We believe the commenter has provided sufficient information to substantiate that the units are not expected to be able to meet our proposed $\mathrm{NO_X}$ emission limit of 0.15 lb/MMBtu when the units are primarily operated at less than 50% of their operating capacity. In particular, the information provided by the commenter indicates that LNB/SOFA achieves optimal $\mathrm{NO_X}$ control when the boiler is operated from 50 to 100% steam flow because the heat input across this range is sufficient to safely redirect a substantial portion of combustion air through the overfire air registers.[158] This allows the combustion zone airflow to be sub-stoichiometric and oxygen to be reduced to the point where much of the elemental nitrogen in the fuel and combustion air can pass through the boiler without oxidizing (*i.e.,* converting to $\mathrm{NO_X}$). When a boiler is operated below the 50 to 100% capacity range, $\mathrm{NO_X}$ concentrations on a lb/MMBtu basis can be elevated due to the lower heat input rating, even though the pounds of $\mathrm{NO_X}$ emitted (*i.e.,* on a mass basis) is less due to the reduced amount of fuel and air. In light of the information provided by the commenter, we believe it is appropriate to promulgate a bifurcated $\mathrm{NO_X}$ emission limit for each unit, as suggested by the commenter.

Therefore, in this FIP we are requiring White Bluff Units 1 and 2 and Independence Units 1 and 2 to each meet a $\mathrm{NO_X}$ emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, where the average is to be calculated by including only the hours during which the unit was dispatched at 50% or greater of maximum capacity, as requested by the commenter. Specifically, the 30 boiler-operating-day rolling average is to be calculated for each unit by the following procedure: (1) Summing the total pounds of $\mathrm{NO_X}$ emitted during the current boiler-operating-day and the preceding 29 boiler-operating-days, including only emissions during hours when the unit was dispatched at 50% or greater of maximum capacity; (2) summing the total heat input in MMBtu to the unit during the current boiler-operating-day and the preceding 29 boiler-operating-days, including only the heat input during hours when the unit was dispatched at 50% or greater of maximum capacity; and (3) dividing the total pounds of $\mathrm{NO_X}$ emitted as calculated in step 1 by the total heat input to the unit as calculated in step 2. In addition to this limit that is intended to control $\mathrm{NO_X}$ emissions when the units are operated at 50% or greater of maximum capacity, we are establishing a limit in lb/hr for periods in which the units are operated at less than 50% capacity. However, the 1,342.5 lb/hr emission limit suggested by the commenter is too high to appropriately control $\mathrm{NO_X}$ emissions when the units are operated at low capacities. There is no indication in the comments submitted that the 1,342.5 lb/hr emission limit suggested by the commenter was based on a vendor guarantee. The commenter did not explain how the 1,342.5 lb/hr limit was calculated, but it appears that it was calculated by multiplying the 0.15 lb/MMBtu limit by the maximum heat input rating for each unit (8,950 MMBtu/hr), which yielded 1,342.5 lb/hr. An emission limit of 1,342.5 lb/hr would be appropriate when the unit is operated at high capacities considering that the limit was calculated based on the unit's maximum heat input rating. However, such an emission limit would not be sufficiently protective or appropriate when the unit is operated at lower capacities when it is expected that NO_X emissions on a mass basis would be lower compared to operation at high capacity. To address this concern, we have calculated a new emission limit of 671 lb/hr that is based on 50% of the unit's maximum heat input rating, and is applicable only when the unit is being operated at less than 50% of the unit's maximum heat input rating. We calculated this limit by multiplying 0.15 lb/MMBtu by 50% of the maximum heat input rating for each unit (*i.e.,* 50% of 8,950 MMBtu/hr, or 4,475 MMBtu/hr). This limit is on a rolling 3-hour average, where the average is to be calculated by including emissions only from the hours during which the unit was operated at less than 50% of the unit's maximum heat input rating (*i.e.,* hours when the heat input to the unit is less than 4,475 MMBtu). We are not establishing a lb/hr emission limit that applies when the units are operated at 50% or greater of the unit's maximum heat input rating because there is no need for it since the 0.15 lb/MMBtu limit will address NO_X emission during those operating conditions.

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[158] See comments submitted during the comment period by Entergy Arkansas Inc., including Exhibit G to Entergy's comments. These and all other comments and associated attachments submitted during the public comment period are found in the docket associated with this rulemaking.

As such, we are requiring White Bluff Units 1 and 2 and Independence Units 1 and 2 to each meet a NO_X emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, where the average is to be calculated by including only the hours during which the unit was dispatched at 50% or greater of maximum capacity, as requested by the commenter. In addition, we are requiring White Bluff Units 1 and 2 and Independence Units 1 and 2 to each meet a NO_X emission limit of 671 lb/hr on a rolling 3-hour average that applies only to the hours when the unit is operated at less than 50% of the unit's maximum heat input rating. We believe that these limits address the commenter's concern of not being able to meet the lb/MMBtu emission limit when the unit is being operated at lower capacities, and will also ensure that NO_X emissions are appropriately controlled when the units are operated at higher capacities, as well as when they are operated at lower capacities.

Comment: Assuming EPA proceeds with BART for the Domtar Ashdown Mill, the mill conceptually agrees with the proposed BART SO_2 limit for Power Boiler 1 of 21.0 lb/hr on a 30-day averaging basis with no add-on control. However, based on the methodology the mill uses to determine fuel usage, the emission limit needs to be expressed in an alternative form to better match with the compliance averaging time of 30 days. Calculation of hourly SO_2 emissions using hourly fuel usage information is not a workable approach for Power Boiler 1, where the facility's practice is to use monthly fuel usage information that is reconciled at the end of each month based on fuel inventory records. Records of daily fuel usage may be adjusted at the end of the month as part of the reconciliation process. Therefore, Domtar requests the BART limit of 21.0 lb/hr be expressed as 504 lb/day.

Response: After carefully considering this comment we have determined that Domtar's request for an SO_2 BART emission limit in terms of lb/day is reasonable. An emission limit in terms of lb/day will be better suited for the mill's methodology of using monthly fuel throughput information. Therefore, as requested by the facility, we are finalizing an SO_2 BART emission limit of 504 lb/day for Power Boiler No. 1.

E. Domtar Ashdown Mill Repurposing Project

Comment: The Domtar Ashdown Mill is in the process of re-purposing and is in a state of transition. Once the re-purposing and re-configuration is complete and the mill is fully operational, the mill will need to decide if Power Boiler 1 will continue with full or intermittent operation, and if so what fuels will be used, or will be retired. If the boiler is fuel switched to natural gas or the boiler retired, the SO_2 BART limit will be unnecessary along with the associated monitoring, recordkeeping and reporting requirements for the SO_2 BART limit. The Ashdown Mill is requesting EPA include in the FIP final rule an alternate compliance option that removes all of SO_2 BART related requirements for Power Boiler 1 if this boiler is switched to burn only natural gas. If Power Boiler 1 is switched to burn only natural gas, requirements for NOx testing also need to be removed and an alternate NO_X BART compliance option needs to be developed to allow compliance to be based on the use of AP–42 emission factors and fuel use records. If Power Boiler 1 is retired, there is no need to retain the SO_2 and NO_X BART limits and associated requirements, and an alternate BART compliance option should address this retirement scenario as well.

Response: We proposed an SO_2 BART emission limit of 21.0 lb/hr for Power Boiler No. 1. As discussed in section IV. of this final rule, we are finalizing an emission limit in terms of lb/day, as requested by Domtar. We proposed to find that to demonstrate compliance with this SO_2 BART emission limit, the facility was required to use a site-specific curve equation (provided to us by the facility) to calculate the SO_2 emissions from Power Boiler No. 1 when combusting bark, and to confirm the curve equation using stack testing.[159] We also proposed to find that to calculate the SO_2 emissions from Power Boiler No. 1 when combusting fuel oil, the facility must assume that the SO_2 inlet is equal to the SO_2 being emitted at the stack.[160] In our proposal we invited public comment specifically on the issue of whether our proposed method of demonstrating compliance is appropriate.

We note that we became aware that Power Boiler No. 1 wished to burn only natural gas after the end of the comment period for our proposal, and that the facility has submitted a permit renewal application to ADEQ that will reflect this enforceable change.[161] We do not agree that the SO_2 BART emission limit becomes "unnecessary" when a unit is switched to burn only natural gas. The Regional Haze regulations define BART as an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility.[162] Therefore, a BART emission limit is still applicable and is required regardless if the unit switches to natural gas. However, the repurposing project the mill is currently undergoing and the fact that the facility's air permit will be revised such that Power Boiler No. 1 will be permitted to burn only natural gas render it appropriate to provide the facility with flexibility in demonstrating compliance with the SO_2 emission limit. Therefore, in addition to the method we proposed for demonstrating compliance with the SO_2 BART emission limit for Power Boiler No. 1, we are also finalizing one alternative method for demonstrating compliance: The owner or operator may demonstrate compliance with the SO_2 emission limit by switching Power Boiler No. 1 to burn only pipeline quality natural gas. Therefore, if the facility's air permit is revised to reflect that Power Boiler No. 1 is permitted to burn only pipeline quality natural gas, this would satisfy the requirement for demonstrating compliance with the boiler's SO_2 BART emission limit, and the reporting and recordkeeping requirements would be waived. We are revising proposed § 52.173 to reflect this.

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[159] 80 FR 18944, 18980.

[160] 80 FR at 18980.

[161] See file "Record of Meeting_March 10 2016," which can be found in the docket for this rulemaking.

[162] 40 CFR 51.301.

We are finalizing our determination that NO_X BART for Power Boiler No. 1 is an emission limit of 207.4 lb/hr. We proposed that to demonstrate compliance with this NO_X BART emission limit, the facility was required to conduct annual stack testing. In response to a separate comment provided by Domtar, in our final FIP we are requiring stack testing every five years instead of annually to demonstrate compliance with the NO_X BART emission limit. The repurposing project the mill is currently undergoing and the fact that the facility's air permit will be revised such that Power Boiler No. 1 will be permitted to burn only natural gas render it appropriate to provide the facility with flexibility in demonstrating compliance with the NO_X emission limit. Therefore, we are also providing one alternative method for demonstrating compliance with the NO_X emission limit: If the facility's air permit is revised to reflect that Power Boiler No. 1 is permitted to burn only pipeline quality natural gas, the facility may demonstrate compliance with the NO_X emission limit by calculating emissions using AP–42 emission factors and fuel usage records. Under these circumstances, the facility would not be required to demonstrate compliance with the NO_X BART emission limit for Power Boiler No. 1 through stack testing. We are revising proposed § 52.173 to reflect this.

With regard to the request that we include a provision in our FIP that removes all SO_2 and NO_X BART related requirements for Power Boiler 1 if this boiler is permanently retired in the future, we noted above that the Regional Haze regulations define BART as an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The BART emission limits and applicable requirements continue to apply regardless if a BART source is mothballed or retired/shut down without being dismantled, decommissioned, and having the air permit revoked. In the event that the BART source is permanently shut down, dismantled, decommissioned, and the permit revoked in the future, the process for removing the BART emission limits and applicable requirements would necessarily involve a request by the company for partial FIP withdrawal or a SIP revision from the State in the event that we have approved a SIP revision that replaces our FIP. We are committed to work with ADEQ and the facility to partially withdraw our FIP with respect to the emission limits for the BART unit or revise the SIP if at some point in the future the company decides to permanently shut down, dismantle, and decommission the boiler and surrender the air permit.

Further, we consider the conditions under which a unit is permanently retired and the mechanism by which this is made enforceable to be critical. Because the company has not decided if and when Power Boiler No. 1 will be permanently retired or decided what the conditions of the retirement will be, we believe that it is reasonable and appropriate to wait until the company makes these decisions instead of including a provision in our FIP that waives the BART recordkeeping requirements in anticipation that the unit's permanent retirement will take place under certain conditions and made enforceable through a particular mechanism that may be different from what ultimately takes place.

Comment: If Power Boiler 2 is fuel switched to natural gas or retired as part of the Domtar Ashdown Mill's repurposing project, there is no need to retain the SO_2 and PM BART limits and the associated monitoring, recordkeeping and reporting requirements for the SO_2 and PM BART limits. The Ashdown Mill requests that EPA include in the FIP final rule an alternative compliance option which removes the SO_2 and PM BART limits and the associated requirements if the boiler is fuel switched to natural gas or permanently retired. Additionally, if Power Boiler 2 is fuel switched to natural gas as part of the Domtar Ashdown Mill's repurposing project, the NO_X BART requirements need to be modified to require compliance based on the use of AP–42 emission factors and fuel use records. The requirement to operate and maintain a NO_X CEM needs to be removed. If Power Boiler 2 is retired, all the BART requirements are unnecessary. The Ashdown Mill requests that EPA include alternate compliance options in the FIP final rule provisions to address these potential scenarios.

Response: We are finalizing an SO_2 BART emission limit of 91.5 lb/hr and we are finalizing our determination that compliance with the Boiler MACT PM standard as revised satisfies the PM BART requirement for Power Boiler No. 2. We proposed to require the facility to demonstrate compliance with the SO_2 emission limit for Power Boiler No. 2 using the existing CEMS, and to demonstrate compliance with the PM emission limit using the same method that is used for demonstrating compliance with the Boiler MACT PM standard. We are finalizing these methods for demonstrating compliance with the SO_2 and PM emission limits for Power Boiler No. 2. With regard to the commenter's request that we include an alternate compliance option in our FIP that removes the SO_2 and PM BART limits if the boiler is switched to natural gas, we do not have the authority to do this. The Regional Haze regulations define BART as an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility.[163] The BART emission limits are still applicable and are required regardless if the unit is switched to natural gas. However, the repurposing project the mill is currently undergoing and the possibility of Power Boiler No. 2 being converted to burn only natural gas render it appropriate to provide the facility with flexibility in demonstrating compliance with the SO_2 and PM emission limits for Power Boiler No. 2. Therefore, we are providing one alternative method for demonstrating compliance with the SO_2 and PM emission limits: The owner or operator may demonstrate compliance with these emission limits by switching Power Boiler No. 2 to burn only natural gas. Therefore, if Power Boiler No. 2 is switched to burn only pipeline quality natural gas, and the air permit is revised to reflect this change, this would satisfy the requirement for demonstrating compliance with the boiler's SO_2 and PM BART emission limits, and the related reporting and recordkeeping requirements would be waived. Under these circumstances, the SO_2 and PM BART determinations for Power Boiler No. 2 would continue to apply but the facility would be able to demonstrate compliance with these emission limits by virtue of switching to natural gas and it would not be required to use the existing CEMS to demonstrate compliance with the SO_2 BART emission limit. We are revising proposed § 52.173 to reflect this.

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[163] 40 CFR 51.301.

We are requiring Power Boiler No. 2 to meet an emission limit of 345 lb/hr to satisfy the NO_X BART requirement. We proposed to require the facility to demonstrate compliance with this NO_X emission limit using the existing CEMS, and we are finalizing this method for demonstrating compliance. However, the repurposing project the mill is currently undergoing and the possibility of Power Boiler No. 2 being converted to burn natural gas only render it appropriate to provide the facility with flexibility in demonstrating compliance with the NO_X emission limit. Therefore, we are providing one alternative method for demonstrating compliance with the NO_X emission limit: If Power Boiler No. 2 is switched to burn only pipeline quality natural gas, and the air permit is revised to reflect this, the facility may demonstrate compliance with the NO_X emission limit by calculating emissions using AP–42 emission factors and fuel usage records. Under these circumstances, the facility would not be required to use the existing CEMS to demonstrate compliance with the NO_X BART emission limit. We are revising proposed § 52.173 to reflect this.

We do not have the authority to include in our FIP a provision that removes all SO_2, NO_X, and PM BART requirements for Power Boiler No. 2 if it is permanently retired in the future. As noted above, the Regional Haze regulations define BART as an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The BART emission limits and applicable requirements continue to apply regardless if a BART source is mothballed or retired/shut down without being dismantled, decommissioned, and having the air permit revoked. In the event that the BART source is permanently shut down, dismantled, decommissioned, and the permit revoked in the future, the process for removing the BART emission limits and applicable requirements would necessarily involve a request for a partial FIP withdrawal or a SIP revision in the event that we have approved a SIP revision that replaces our FIP. We are committed to work with ADEQ and the facility to partially withdraw our FIP with respect to the emission limits for the BART unit or revise the SIP if at some point in the future the company decides to permanently shut down, dismantle, and decommission the boiler and surrender the air permit.

Further, we consider the conditions under which a unit is permanently retired and the mechanism by which this is made enforceable to be critical. Because the company has not decided if and when Power Boiler No. 2 will be permanently retired or decided what the conditions of the retirement will be, we believe that it is reasonable and appropriate to wait until the company makes these decisions instead of including a provision in our FIP that waives the BART recordkeeping requirements in anticipation that the unit's permanent retirement will take place under certain conditions and made enforceable through a particular mechanism that may be different from what ultimately takes place.

Comment: EPA proposes to require compliance with the SO_2 BART emission limit for Power Boiler 2 within 3 years of the effective date of the final rule. EPA also proposes compliance with the NO_X BART emission limit within 3 years of the effective date of the final rule. With the mill transformation and re-purposing project and all of the work associated with this huge undertaking, the Ashdown Mill needs a 5-year compliance window from the effective date of the final rule for the SO_2 and NO_X BART requirements for Power Boiler 2 (assuming EPA decides to proceed with BART for the mill). As announced in late 2014, the mill is converting a paper machine to produce fluff pulp. This transformation project is being driven by the continued decline in the demand for paper products. Power 1 and Power Boiler 2 are part of the mill's steam generating components, and are operated to produce steam that is needed for the manufacturing of pulp and paper products. It is anticipated that this mill transformation project may significantly affect mill steam demands reducing the amount of steam needed from Power Boiler 1 and 2. Ultimately, this transformation project may determine future use of Power Boiler 2. Once the re-purposing and re-configuration of the mill systems is complete and fully operational, the mill will decide whether Power Boiler 2 will continue with full or intermittent operation, if so, using what fuels, or will it be permanently retired. In order to make this decision, the mill will need to go through the startup, initial operation and a shakedown period with the new fluff pulp process. Since this is a significant change for the mill it is uncertain how long it will take to learn how to operate and to optimize in this newly configured state. The mill will then need at least 2 winter cycles to understand what the maximum steam demand requirements will be for the newly configured mill. The re-purposing project is scheduled to be completed and the newly configured mill is anticipated to start-up in late 2016. The mill will operate through the winter of 2016–2017 and will be learning how to operate and optimize the new process. The winter of 2017–2018 will be the first real indicator of what winter steam demands will be in the re-purposed state. For the purposes of selecting an appropriate BART compliance schedule and future mill operations, the understanding of how the Power Boilers will operate and on what fuels is essential. The project schedule will set these key decision points in late 2018. Once the decision on mill steam needs and boiler utilization is made, additional time is required to implement the boiler scenario selected by the mill. These scenarios could range from the mothballing or retiring Power Boilers 1 or 2 to shifting fuels. In addition, changes involving the combustion of the NCG gases and the shared biomass feed system also need to be determined and new systems engineered and permitted, as needed. Another factor to be considered is determining the ability of the existing SO_2 scrubber to continuously operate at 90% removal on a long-term basis. If Power Boiler 2 continues to use solid fuels, additional time is needed to optimize the existing scrubber to consistently perform at this higher level of control efficiency on a long-term basis. Given the mill's interconnected nature as well as the complex aspects of the re-purposing project, a 5-year compliance schedule for achieving the SO_2 BART and NO_X BART requirements for Power Boiler 2 is essential.

Response: We have reconsidered the SO_2 and NO_X BART compliance dates for Power Boiler No. 2 in response to this comment. We understand the commenter's concerns with respect to how the transformation and repurposing project the mill is currently undertaking may significantly affect mill steam demands and may ultimately determine future use of Power Boiler No. 2. We understand that the mill will decide the future use of Power Boiler No. 2, including whether it will be converted to other fuels or permanently retired, after the repurposing and reconfiguration of the mill systems is complete and fully operational and after the mill has learned how to operate and to optimize in its newly configured state. Our understanding from the comments is that Ashdown Mill expects to make this decision in late 2018, but that additional time will be needed to implement the boiler scenario selected by the mill, which could include switching fuels, mothballing or retiring the boilers, or continued operation and combustion of solid fuels and installation of air pollution controls to meet the BART emission limits. It is not EPA's intention to place an undue burden on the Domtar Ashdown Mill by requiring a compliance date that may not provide sufficient time for the mill to install controls or otherwise make the necessary operating changes to meet the boiler's BART emission limits. While we believe that a 3-year compliance date is generally sufficient for installation of the controls on which the BART emission limits are based, due to the special circumstances in this case we believe that it is reasonable and appropriate to establish a longer compliance date particularly since it could avoid unnecessary investment in a scrubber that may be no longer needed due shutdown or fuel switch. Therefore, we are requiring that the mill comply with the SO_2 and NO_X BART emission limits no later than 5 years from the effective date of this final rule and have amended the proposed regulatory text to reflect this change. We believe that this adequately addresses the commenter's concerns while in keeping with the CAA mandate that compliance with BART requirements must be as expeditiously as practicable but in no event later than 5 years after promulgation of this FIP.

F. Other Compliance Dates

Comment: EPA proposed compliance with the SO_2 and NO_X BART limits for Power Boiler 1 and for the PM BART limit for Power Boiler No. 2 to be on the effective date of the final rule. Should EPA proceed with imposing these BART limits, the Ashdown Mill requests the compliance date be changed to 30 calendar days after effective date of the final rule. That will give the mill additional time to prepare the compliance records if there is a short period between when the rule is promulgated and the effective date, especially if the effective date of the final rule falls on a weekend or a holiday. In addition, if any confusion exists regarding exactly when the effective date is, the cushion of 30 days helps to provide more certainty. This extra time will be needed if EPA finalizes any changes to definitions or other requirements that require the Ashdown to adjust recordkeeping systems.

Response: We are finalizing a NO_X BART emission limit of 207.4 lb/hr for Power Boiler No. 1, which is what we proposed. We proposed an SO_2 BART emission limit of 21.0 lb/hr for Power Boiler No. 1, and as discussed in section IV. of this final rule, we are finalizing an emission limit of 504 lb/day. We are finalizing our determination that compliance with the Boiler MACT PM standard satisfies the PM BART requirement for Power Boiler No. 2. As discussed elsewhere in this section of the final rule, we are finalizing some changes to the definitions and BART requirements for Power Boiler No. 1. After carefully considering this comment, we have determined that extending the compliance dates associated with the aforementioned BART emission limits for Power Boiler No. 1 is appropriate because it is a reasonable request that will allow the owner or operator of the affected facility to prepare applicable compliance records and adjust recordkeeping systems without unduly delaying compliance with the BART requirement. Therefore, we are revising the compliance dates we proposed for the SO_2 and NO_X BART emission limits for Power Boiler No. 1 and the PM BART requirement for Power Boiler No. 2 such that the owner or operator must comply with these emission limits no later than 30 calendar days from the effective date of the final rule.

Comment: EPA's proposed BART requirements will require installation of new emission controls on utility electric generation resources at a significant cost. The utilities will pass these costs on to Arkansas ratepayers. The Ashdown Mill, like other energy intensive manufacturers, will be affected by the increasing cost of electric power needed to operate our processes. EPA should also consider other emerging regulatory initiatives that will be driving substantial changes to major coal burning facilities. Manufacturing facilities, such as the Ashdown Mill, are undertaking major transformation projects that potentially may result in a move away from coal and other emerging regulations targeting utilities are likely to further reduce coal burning and further remove visibility concerns. A practical alternative to EPA's proposed compliance dates is for EPA to use its discretion under the Regional Haze Rule and delay the Arkansas BART requirements for all sources for five years. This will align compliance timelines so that the full effects of all of these regulatory changes will be known. Facilities affected by these other requirements can plan holistic compliance strategies rather than being compelled to follow an expensive and potentially wasteful piecemeal approach. Using the maximum 5-year window allowed under BART will provide the Ashdown Mill the time to determine if coal will continue as a fuel for the facility. It will also provide the other affected sources in Arkansas with time to address the Clean Power Plan strategies and other significant regulatory programs that may also remove coal as a fuel. The effect of allowing a full 5-year compliance program will thereby minimize the potential for stranded assets and minimize the cost increases on companies and on ratepayers. This approach is further compelled by the fact that Arkansas is more than meeting its "glide path" as discussed above.

Response: We acknowledge the commenter's concerns related to the potential increase in utility rates for Arkansas ratepayers as well as to potential requirements related to other CAA and EPA regulatory actions. We agree that multiple regulatory actions are pending that will affect the power sector and that regulatory development should be coordinated when possible while still meeting the statutory and regulatory requirements for compliance. We also recognize the importance of long-term and coordinated planning on the parts of owners of industrial sources that are subject to BART. However, we disagree that our FIP presents a tight or unreasonable regulatory timeline. It is an appropriate timeline for cost-effective control measures needed to meet the regional haze requirements.

The CAA and Regional Haze Rule require the installation and operation of BART, in particular, to be carried out expeditiously. The CAA defines the term "as expeditiously as practicable" to mean "as expeditiously as practicable but in no event later than five years after the date of approval of a [Regional Haze] plan revision. . . ."[164] Therefore, we do not have the authority to delay compliance dates across the board for all subject-to-BART sources in Arkansas to allow time for greater certainty regarding requirements associated with other CAA and regulatory requirements. We also disagree that ADEQ's finding that Arkansas Class I areas are projected to be below the URP glidepath in 2018 is sufficient justification for delaying the compliance dates for all subject-to-BART sources in Arkansas. We address other more specific comments related to this issue in a separate response.

In determining what is "as expeditiously as practicable" for installation and operation of a particular control technology, the states and EPA usually consider the amount of time it generally takes to install and operate that type of technology at similar sources and the compliance dates that have been required for the installation and operation of the same type of control technology at similar sources in other regional haze actions, especially if there are no source-specific considerations or other special circumstances that would prevent the source from installing and operating the control technology within the same amount of time. For example, where a particular control technology can generally be installed and operated in 3 years, and where there are no source-specific considerations or other special circumstances that would affect the facility's ability to install and operate the control technology within that time frame, it would not be in accordance with the CAA and the Regional Haze Rule to allow a 5-year compliance period because that would not be as expeditiously as practicable. Additionally, considering that most other states already have plans in place that fully address the regional haze requirements, it would be inequitable and contrary to the intent of the CAA and the Regional Haze Rule to further delay implementation of regional haze requirements in Arkansas by allowing a 5-year compliance date across the board for all of Arkansas' subject-to-BART sources. Therefore, we disagree that it is appropriate for us to allow a 5-year compliance date for all subject-to-BART sources in Arkansas, rather than establishing deadlines consistent with the facts and regulatory requirements in each instance.

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[164] CAA section 169A(b)(2)(A) and (g)(4).

We do note that we are revising some of the compliance dates we proposed in response to source-specific considerations raised in other comments. We address these comments in separate responses.

Comment: If EPA's final SO_2 BART determination for Flint Creek Unit 1 is based on installation of a NID dry scrubber, EPA should impose a shorter compliance deadline, as required by the Act. EPA's proposed FIP requires Flint Creek Unit 1 to comply with the SO_2 BART determination within five years from the effective date of the final rule. Yet the statute requires a source to comply with BART as expeditiously as possible, but no later than five years from the effective date of EPA's action on the regional haze plan.[165] AEP could install a NID scrubber at Flint Creek much more expeditiously than five years from the effective date of the rule. The utility has already obtained an Arkansas PSC order finding that NID dry scrubber installation is in the public interest.[166] ADEQ has already issued a Title V air permit for scrubber construction and operation at Flint Creek.[167] Further, it appears that on-site construction of the NID scrubber has begun, and that the Flint Creek owners intend to operate it by May 29, 2016, in order to comply with EPA's MATS rule.[168] Thus, given that AEP is currently installing the NID scrubber with a May 2016 planned operation date, EPA's five-year SO_2 BART compliance deadline does not comply with the statutory requirement that BART controls be installed "as expeditiously as practicable,"[169] Since AEP is installing the NID scrubber for MATS as well as BART compliance, EPA should require SO_2 BART compliance at Flint Creek by no later than May 29, 2016.

Response: We acknowledge the information provided by the commenter regarding AEP Flint Creek's plans to complete installation of the NID system in 2016 in order to comply with 40 CFR part 63, subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, otherwise known as the Utility MATS Rule. MATS establishes emission limits for three categories of pollutants: Mercury, acid gases (HCl and SO_2), and non-mercury hazardous air pollutant (HAP) metals. To address acid gases, an EGU must comply with an HCl emission limit unless it is equipped with a wet or dry FGD or DSI and an SO_2 CEMS, in which case it has the option of complying with an alternative SO_2 emission limit. The applicable alternative SO_2 emission limit is 0.2 lb/MMBtu.

The commenter has made us aware that the Arkansas PSC has determined that dry scrubber installation at Flint Creek is in the public interest and that the installation of those controls is already underway and anticipated by the company to be complete by May 29, 2016. The commenter also points to the air permit issued to Flint Creek by ADEQ on October 25, 2013, which allows for the installation and operation of new control equipment and associated material handling systems to comply with the requirements of the Utility MATS Rule. These controls include a NID system on Unit 1. The AEP–SWEPCO Web site also indicates that the installation of these scrubber controls is driven by MATS and future Regional Haze rules.[170] A timeline provided on the Web site states that construction of these controls began in October 2013 and that installation will be complete and the facility will be operating with these controls by the end of May 2016. In addition, the commenter has made us aware that the Arkansas PSC requires Flint Creek to provide quarterly reports on the progress of the installation of these controls. The first report the company submitted to the Arkansas PSC is dated March 26, 2014, and stated that the FGD project includes the installation of an Alstom NID system to comply with MATS and in anticipation of the BART requirements. The report also stated that the NID system and associated equipment are to be constructed at Flint Creek Unit 1, and that the company established design, procurement, and construction schedules to bring the upgraded plant fully on line by May 29, 2016. The commenter provided the report as an attachment to the comments submitted, but this and all other quarterly reports the company submitted to the Arkansas PSC are available online.[171] The most recent quarterly report available on the Arkansas PSC Web site is dated March 10, 2016, and covers the fourth quarter in 2015. This report indicated that the company still expected the upgraded plant to be fully on line by May 29, 2016. We verified the status of the installation of the controls with the company, who confirmed that installation of the NID controls was completed in June 2016, and that the plant is now operating with those controls.[172]

After carefully considering the information the commenter has brought to our attention, we no longer believe that a 5-year compliance date is appropriate for the SO_2 BART controls we are requiring for Flint Creek. We agree with the commenter that BART controls must be installed as expeditiously as practicable. CAA section 169A(b)(2)(A). Therefore, we are finalizing a shorter compliance date. The information made available to us during the comment period, as discussed above, indicates that Flint Creek intends to operate the NID system to comply with the alternative SO_2 emission limit under the Utility MATS rule. The applicable SO_2 emission limit is 0.2 lb/MMBtu. The SO_2 emission limit we are requiring in our FIP to satisfy the BART requirement is 0.06 lb/MMBtu. As indicated in the information and other documentation the commenter provided, the company plans to use the same NID system to comply with MATS and to comply with the facility's SO_2 BART requirement. We expect that to achieve an emission rate of 0.06 lb/MMBtu, additional scrubbing reagent would be needed beyond that required to meet the 0.2 lb/MMBtu emission limit the company is required to meet by April 2016 under MATS. We also recognize that it is possible that the reagent handling system installed to meet the 0.2 lb/MMBtu emission limit would need some upgrades in order to accommodate the additional scrubbing reagent that would be needed to achieve the more stringent 0.06 lb/MMBtu emission limit we are requiring in this FIP. Therefore, to allow the facility sufficient time to secure the additional scrubbing reagent that would be needed to comply with the SO_2 BART emission limit and to make any necessary upgrades to the reagent handling system, we are finalizing an 18-month compliance date for Flint Creek Unit 1 to comply with the SO_2 BART requirement. We believe this is will provide sufficient time for the facility to be able to achieve the SO_2 BART requirement while still meeting the statutory mandate that BART controls be installed as expeditiously as practicable.

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[165] 40 CFR 51.308(e)(1)(iv).

[166] See 7/10/2013 SWEPCO News Release, SWEPCO Receives Arkansas Commission Approval for Flint Creek Plant Project, at *https://www.swepco.com/info/news/viewRelease.aspx?releaseID=1424*.

[167] See Stamper Report at 14 (citing October 25, 2013 Permit No. 0276–AOP–R6 at 5 (Ex. 29 to Stamper Report)).

[168] Stamper Report at 14 (citing Flint Creek Retrofit Project, SWEPCO News & Info Site at *https://swepco.com/info/projects/FlintCreek/*; March 26, 2014 Independent Monitor Report for AEP Flint Creek Plant Unit 1, submitted to the Arkansas Public Service Commission under Docket No. 12–008–U, at (Ex. 30 to Stamper Report)).

[169] CAA section 169A(b)(2)(A).

[170] *https://www.swepco.com/info/projects/FlintCreek/*.

[171] See the Arkansas PSC Web site at *http://www.apscservices.info/efilings/docket_search.asp*. The quarterly reports the company is required to submit to the Arkansas PSC are available by searching for docket No. 12–008–U.

[172] See file titled "Record of Call- Flint Creek_ August 10 2016," which is found in the docket for this rulemaking.

Comment: If EPA's final NO_X BART determination for White Bluff is based on installation of a SCR with LNB/SOFA, EPA should require a NO_X BART compliance date for SCR at White Bluff of no later than within 3 years of the final rule's effective date, which would represent the expeditious implementation required by CAA section 169A(b)(2)(A). The NO_X BART compliance date for LNB/SOFA should be 8 months from the final rule's effective date. If EPA finalizes its proposal to require LNB/SOFA only as NO_X BART for White Bluff, EPA should require compliance within 8 months of the final rule's effective date. Eight months is sufficient time for installation of these controls. These same comments apply and should be extended to EPA's reasonable progress determination for NO_X for Independence Units 1 and 2.

Response: We are requiring White Bluff Units 1 and 2 and Independence Units 1 and 2 to each meet a NO_X emission limit of 0.15 lb/MMBtu on a 30 boiler-operating-day rolling average, where the average is to be calculated by including only the hours during which the unit was dispatched at 50% or greater of maximum capacity. In addition, we are requiring each unit to meet a NO_X emission limit of 671 lb/hr on a rolling 3-hour average that is applicable only when the unit is being operated at less than 50% of the unit's maximum heat input rating. These emission limits are consistent with the installation and operation of LNB/SOFA controls. In light of the comment, we have reconsidered the compliance date for the NO_X BART requirements for White Bluff Units 1 and 2 and for the NO_X controls under reasonable progress for Independence Units 1 and 2. Based on the supporting information provided by the commenter, we agree with the commenter that 6–8 months is the typical installation timeframe for LNB/OFA controls.[173] However, in determining the appropriate compliance date for these NO_X controls, we have also taken into consideration that we are finalizing NO_X emission limits that are based on LNB/OFA or LNB/SOFA controls for a total of five EGUs in this FIP and that the installation of these controls will require outage time. These five EGUs are Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2, and combined they accounted for approximately 45% of the state's 2015 heat input. Because of the heavy reliance on these EGUs for electricity generation in the state, we recognize that it may be difficult to schedule outage time to install LNB/OFA or LNB/SOFA on all five of these Arkansas units within the typical installation timeframe of 6–8 months and at the same time supply adequate electricity to meet demand in the state. In light of these unique circumstances, we find that it is appropriate to finalize an 18-month compliance date for White Bluff Units 1 and 2, Independence Units 1 and 2, and Flint Creek Unit 1 to comply with the NO_X emission limits required by this FIP. This compliance date provides the affected utilities sufficient time beyond typical LNB/OFA installation timeframes to install these controls and comply with their NO_X emission limits, while safeguarding the continuity of Arkansas' electricity supply.

We address comments contending that we should require SCR controls on White Bluff and Independence elsewhere in this final rule and in our RTC document.

Comment: One commenter noted that the proposed FIP would require Flint Creek Unit 1 to comply with the NO_X BART requirement within 3 years of the effective date of the rule. The commenter argued that if EPA's final NO_X BART determination for Flint Creek is based on installation of LNB/OFA, EPA should establish a shorter compliance deadline since compliance with BART is required as expeditiously as practicable.[174] The commenter contends that AEP has been planning for the installation of LNB/OFA and that construction has already begun. The commenter argues that since the utility is currently installing LNB/OFA with a May 2016 planned operation date, EPA should require a NO_X BART compliance date of no later than May 2016 in order to ensure the expeditious implementation required by law.

AEP/SWEPCO, which is one of the owners of Flint Creek, also commented on our proposed NO_X BART compliance date for Flint Creek Unit 1. The company stated that if EPA does not rely on CSAPR to satisfy the NO_X BART requirement for EGUs in Arkansas, it supports EPA's determination of LNB/OFA controls as BART and the associated limits proposed by EPA. But the company stated that the proposed 3-year compliance timeframe is unreasonable. The company stated that the compliance time frame must allow for planning, selection of engineering and design professionals, vendors, contractors, permitting, start up and commissioning, and coordinating and scheduling unit outages. The company also argued that since EPA has allowed installation schedules up to 5 years in other states, we should allow such a time frame here.

Response: We are finalizing our determination that NO_X BART for AEP Flint Creek Unit 1 is an emission limit of 0.23 lb/MMBtu on a 30 boiler-operating-day rolling average, which is consistent with the installation and operation of LNB/OFA. The commenter has not provided sufficient information to corroborate the claim that installation of LNB/OFA at Flint Creek Unit 1 is expected to be completed by May 2016. We acknowledge that on July 10, 2013, the Arkansas PSC filed an order agreeing that the installation of additional environmental controls at Flint Creek Unit 1, including LNB/OFA to meet the NO_X BART requirement, is in the public interest.[175] In the attachments to the comment, the commenter points to a news article that references a January 21, 2014 report submitted by AEP/SWEPCO to the Arkansas PSC.[176] In that January 21, 2014 report, AEP/SWEPCO announces that construction of environmental controls at Flint Creek commenced on January 20, 2014.[177] However, the January 21, 2014 report does not specify if this includes construction of LNB/OFA. While we acknowledge that there is publicly available information indicating that the company planned to complete installation of a NID system and activated carbon injection by May 2016 to comply with the Utility MATS rule, there is no information available to us corroborating that the expected date of LNB/OFA installation was also May 2016. In fact, the comments submitted by AEP/SWEPCO indicate that the company has not begun installation of these controls.[178] With regard to AEP/SWEPCO's request that we extend the compliance date to 5 years, we have determined that the company has not provided any information regarding any special circumstances specific to the facility that sets it apart from other facilities and that would prevent it from completing installation of controls within typical 3-year LNB/OFA installation timeframes.

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[173] See comments and exhibits submitted by Earthjustice, the National Parks Conservation Association, and Sierra Club, dated August 7, 2015. These and all other comments submitted during the public comment period are found in the docket associated with this rulemaking.

[174] 40 CFR 51.308(e)(1)(iv).

Additionally, as discussed in a previous response, we agree that LNB/OFA can typically be installed within a 6–8 month timeframe. However, in determining the appropriate compliance date for these NO_X controls, we have also taken into consideration that we are finalizing NO_X emission limits that can be achieved by the installation of LNB/OFA or LNB/SOFA controls for a total of 5 EGUs in this FIP. Because of the heavy reliance on these EGUs for electricity generation in the state and because it may be difficult to schedule outage time to install these controls on all five of these units within the typical installation timeframe of 6–8 months without disrupting the supply of electricity in the state, we are finalizing an 18-month compliance date for Flint Creek Unit 1 and the other EGUs to comply with the NO_X emission limits required by this FIP.

G. Compliance Demonstration Requirements

Comment: For purposes of BART for the Domtar Ashdown Mill Power Boiler No. 1 and Power Boiler No. 2, EPA is defining boiler operating day as a 24-hour period between 12 midnight and the following midnight during which any fuel is fed into and/or combusted at any time in the power boiler, consistent with the guidelines for utility boilers. However, the Ashdown Mill boilers are industrial boilers, not utility boilers. The Ashdown Mill defines a mill operating day to be a 24-hour period between 6 a.m. and 6 a.m. the following day. All of the mill's systems for Power Boilers No. 1 and 2 are programmed around this definition of a mill operating day and modification of these systems would require a significant amount of effort and would require the gathering and maintaining of multiple sets of records. Assuming EPA proceeds with BART for the Ashdown Mill, the mill requests that for Power Boiler No. 1 and Power Boiler No. 2 a boiler operating day be defined as "a 24-hr period between 6 a.m. and 6 a.m. the following day during which any fuel is fed into and/or combusted at any time in the power boiler." Harmonizing the definitions of a boiler operating day and a mill operating day does not increase costs for the mill, reduces confusion for the mill operators, eliminates the need for maintaining multiple sets of records, and eliminates the need for changes to existing monitoring systems. We believe EPA is authorized or can use its discretion to define a boiler operating day for the Ashdown Mill to be consistent with the mill's boiler operating day definition.

Response: After carefully considering the comment, we agree that Domtar's request is reasonable and that it is appropriate to harmonize the definitions of a boiler operating day and a mill operating day to avoid any unnecessary modification or reprogramming of Power Boilers 1 and 2. To accommodate Domtar's request, for purposes of Power Boiler 1 and Power Boiler 2, in this final action we are defining a boiler operating day as "a 24-hr period between 6 a.m. and 6 a.m. the following day during which any fuel is fed into and/or combusted at any time in the power boiler." We are revising proposed § 52.173 to reflect this.

Comment: EPA proposed to require compliance with the BART NO_X limit for the Domtar Ashdown mill Power Boiler No. 1 be demonstrated with an annual stack test. Domtar agrees in general that stack testing is an appropriate method for demonstrating compliance. However, EPA's proposal to require stack testing annually is not appropriate. Historical NO_X stack test data from 2001, 2002, 2003, 2004, 2005, and 2010 for Power Boiler 1 show NO_X emissions to be fairly consistent. Based on the numerous previous stack tests, conducting stack tests annually is not warranted. Should EPA proceed with BART for the Ashdown Mill, the facility is requesting that stack testing to demonstrate compliance with the BART NO_X limit be required every 5 years instead of annually, which is consistent with the Ashdown Mill's Title V permit requirements.

Response: After carefully considering the comment, we have reconsidered our proposed requirement of annual stack testing. We agree that the results of the NO_X stack testing conducted by Domtar for Power Boiler No. 1 demonstrate that NO_X emissions have historically remained well below the NO_X emission limit we are finalizing for the boiler.[179] Therefore, we agree with the company that it is appropriate to require stack testing every 5 years instead of annually. In our final action we are requiring that the facility demonstrate compliance with the NO_X BART emission limit for Power Boiler No. 1 by conducting stack testing every five years, beginning no later than 1 year from the effective date of our final action. As discussed in a separate response, we are also providing one alternative method for demonstrating compliance with the NO_X BART emission limit for Power Boiler No. 1. Specifically, if the facility's air permit is revised to reflect that Power Boiler No. 1 is permitted to burn only natural gas, the facility may demonstrate compliance with the NO_X emission limit by calculating emissions using AP–42 emission factors and fuel usage records. Under these circumstances, the facility would not be required to demonstrate compliance with the NO$_X$ BART emission limit for Power Boiler No. 1 through stack testing. We are revising proposed § 52.173 to reflect this.

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[175] See Arkansas Public Service Commission, Docket No. 12–008–U, Order No. 14, dated July 10, 2013. A copy of the order can be found at *http://www.apscservices.info/pdf/12/12-008-u_227_1.pdf.*

[176] See the document titled "Technical Support Document to Comments of Conservation Organizations," which is an attachment to the comments submitted by Earthjustice, the National Parks Conservation Association, and Sierra Club. These and all other comments submitted during the public comment period are found in the docket associated with this rulemaking.

[177] *http://www.apscservices.info/pdf/12/12-008-u_238_1.pdf.*

[178] See the comments submitted by AEP–SWEPCO, dated July 15, 2015 and August 7, 2015. These and all other comments submitted during the public comment period are found in the docket associated with this rulemaking.

[179] See Excel file titled "Email from Domtar Regarding NOx Stack Test for PB1," found in the docket for this final rule. The data provided by Domtar indicate that out of the stack testing conducted in 2001, 2002, 2003, 2004, 2005, and 2010, the highest NO_X emission rate from Power Boiler No. 1 was 171.3 lb/hr, compared to the 207.4 lb/hr NO_X emission limit we are finalizing.

Comment: Assuming EPA proceeds with BART for the Domtar Ashdown Mill, the mill agrees with the proposed BART PM limit of 0.44 lb/MMBTU for Power Boiler No. 2 based on the MACT standard for the "biomass hybrid suspension grate" sub-category contained in the 2013 Boiler MACT final rule. The Ashdown Mill agrees with EPA's approach of relying on the Boiler MACT standards for PM to satisfy the PM BART requirement. However, for this streamlined BART approach, EPA must also ensure that the monitoring, recordkeeping, reporting requirements for PM BART are consistent with the monitoring, recordkeeping and reporting requirements under Boiler MACT. Deviating from the MACT requirements will result in additional administrative burden for the facility in maintaining "multiple sets of compliance books." It also will create confusion for external stakeholders if different values and information are being reported.

Response: We generally agree with the comment. We proposed to find that the Domtar Ashdown Mill may rely on compliance with the Boiler MACT PM standard to satisfy the PM BART requirement for Power Boiler No. 2, and we did not intend for our FIP to establish requirements for compliance demonstration, monitoring, recordkeeping, and reporting different from those the mill is already required to comply with under the Boiler MACT PM standard. In our proposal, our intent was to propose requirements for compliance demonstration, monitoring, recordkeeping, and reporting for the PM BART limit for Power Boiler No. 2 that are consistent with those under the Boiler MACT PM standard. However, the commenter has brought to our attention that only some of the compliance demonstration, monitoring, recordkeeping, and reporting requirements associated with the Boiler MACT PM standard were included under our proposed § 52.173(c)(21) and (22) and that it appeared that we were proposing a separate and distinct set of requirements associated with our PM BART determination for Power Boiler No.2. Therefore, to ensure clarity and consistency, we are revising the regulatory text found under 40 CFR 52.173(c) that applies to Power Boiler No. 2 for PM BART to state that the mill shall rely on compliance with the Boiler MACT PM standard under 40 CFR part 63 Subpart DDDDD as revised to satisfy the PM BART requirement for Power Boiler No. 2. We interpret this to mean that compliance with the applicable Boiler MACT PM standard as revised is sufficient to demonstrate compliance with the PM BART requirement. We are not establishing a separate set of requirements for compliance demonstration, monitoring, recordkeeping, and reporting (*i.e.*, in addition to those already required under the Boiler MACT PM standard, as revised), that Power Boiler No. 2 is required to comply with to satisfy the PM BART requirement.

H. Reliance on CSAPR Better Than BART

Comment: Arkansas is subject to a Cross-State Air Pollution Rule (CSAPR, also referred to as the Transport Rule) FIP for ozone-season NO$_X$. EPA should not require sources that are subject to the CSAPR FIP to also install BART or additional emissions controls based on a reasonable progress analysis. The Regional Haze Rule allows states to implement an alternative program in lieu of BART so long as the alternative program has been demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART.[180] EPA published CSAPR as a replacement to CAIR on August 8, 2011.[181] In the final Transport rule, EPA demonstrated that CSAPR would make greater reasonable progress toward national visibility goals than would BART.[182] EPA concluded in the final Transport rule that a state in the CSAPR region whose EGUs are subject to the requirements of the CSAPR trading program for ozone season NO$_X$ may rely on EPA's finding that CSAPR makes greater reasonable progress than source-specific NO$_X$ BART. Despite EPA's demonstration that CSAPR makes greater reasonable progress than source-specific BART, EPA makes no mention of CSAPR emissions controls in the FIP proposal and requires source specific NO$_X$ BART for Arkansas EGUs that are covered by CSAPR. The approach that EPA has proposed for Arkansas is inconsistent with that taken for other states. EPA promulgated FIPs to replace reliance on CAIR with reliance on CSAPR for the following states: Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia. Similarly, Virginia is revising the Virginia Regional Haze SIP to rely on the Virginia CSAPR FIP to meet BART and reasonable progress requirements for SO$_2$ and NO$_X$. Perhaps most noteworthy, EPA has proposed reliance on CSAPR in states that border Arkansas. The Texas-Oklahoma Regional Haze FIP proposal does not require BART for sources that are subject to CSAPR.[183] In that FIP proposal, EPA reiterates its position that "CSAPR, like CAIR, provides for greater reasonable progress towards the national goal than would BART,"[184] and proposes replacing reliance on CAIR with reliance on the trading programs of CSAPR as an alternative to SO$_2$ and NO$_X$ BART for Texas EGUs.[185] Not only is EPA requiring Arkansas EGUs covered by CSAPR to control emissions under BART in the FIP proposal, but EPA has not even considered CSAPR as an option for making reasonable progress. Even if EPA ultimately rejected CSAPR as a means to meet the reasonable progress requirements under the Regional Haze Rule, EPA is required to cogently explain why it has exercised its discretion in a given manner. EPA's failure to consider CSAPR is arbitrary and capricious in light of its treatment of other states. EPA should withdraw the FIP proposal and remove the source-specific NO$_X$ BART requirements for Arkansas EGUs that are covered by CSAPR in any subsequently proposed plan.

Response: Arkansas EGUs are subject to CSAPR for ozone season NO$_X$, and we acknowledge that a state in the CSAPR region whose EGUs are subject to the requirements of the CSAPR trading program for ozone season NO$_X$ may rely on CSAPR to satisfy the NO$_X$ BART requirement for its EGUs. However, when standing in the shoes of a state and promulgating a FIP, EPA has the same discretion as the state to choose to either conduct source-specific BART determinations or to rely on EPA's 2012 finding that CSAPR is better than BART. Our decision to make source-specific NO$_X$ BART determinations for Arkansas is reasonable for multiple reasons: It is the approach Congress chose in the statute itself;[186] it is consistent with Arkansas' earlier decision to conduct source-specific NO_X BART determinations in lieu of relying on CAIR to meet the BART requirements; and at the time of our proposed action, it properly accounted for uncertainty in the CSAPR better-than-BART regulation created by ongoing litigation regarding the CSAPR program. Further explanation of these reasons is given below.

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[180] 40 CFR 51.308(e); 77 FR 33642.

[181] 76 FR 48208.

[182] 77 FR 33642 (June 7, 2012).

[183] Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Transport State Implementation Plan To Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze and Interstate Transport of Pollution Affecting Visibility, 79 FR 74818.

[184] 79 FR 74818, 74851.

[185] 79 FR 74818, 74853.

[186] See CAA section 169A(g)(2) in which Congress defined the five factor analysis for determining BART but did not expressly provide for an alternative to source by source BART.

The Regional Haze regulations provide generally that ''[a] State may opt'' to rely on an emissions trading program rather than to require source-specific BART controls.[187] More specifically, in 2005 EPA revised the Regional Haze regulations to provide that a state subject to CAIR ''need not require affected BART-eligible EGUs to install, operate, and maintain BART.''[188] Following the D.C. Circuit's vacatur and remand of CAIR,[189] EPA issued CSAPR as a replacement rule. EPA revised its regulations in 2012 to allow states to rely on CSAPR in lieu of source-specific BART.[190]

In its 2008 regional haze SIP submittal, Arkansas decided to not rely on CAIR to satisfy the NO_X BART requirement for its EGUs.[191] In our Regional Haze FIP proposal for Arkansas, we did not rely on CSAPR (the follow up rule to CAIR) to satisfy the NO_X BART requirement for EGUs because we chose to follow the same source-specific approach to NO_X BART that Arkansas selected in its Regional Haze SIP submittal. In addition, litigation surrounding CSAPR was ongoing at the time that we issued our proposed Arkansas Regional Haze FIP. CSAPR was issued in 2011, but on December 30, 2011, the D.C. Circuit stayed the rule prior to implementation. The D.C. Circuit subsequently vacated CSAPR, an action later reversed by the Supreme Court in 2014. The case was then remanded to the D.C. Circuit. Then, after our April 2015 Regional Haze FIP proposal, the D.C. Circuit issued a July 2015 decision in *EME Homer City Generation* v. *EPA*[192] upholding CSAPR but remanding without vacatur a number of the Rule's state NO_X and SO_2 emissions budgets. Arkansas' ozone season NO_X budget is not itself affected by the remand. However, the Court's remand of the affected states' emissions budgets has implications for CSAPR better-than BART, since the demonstration underlying that rulemaking relied on the emission budgets of all states subject to CSAPR, including those that the D.C. Circuit remanded, to establish that CSAPR provides for greater reasonable progress than BART. As of the time EPA is taking this action to finalize Arkansas' Regional Haze FIP, we are in the process of acting on the Court's remand consistent with the planned response we outlined in a June 2016 memorandum.[193]

Our final action on the Arkansas Regional Haze FIP is consistent with our final action on the Texas Regional Haze FIP. Although we proposed to rely on CSAPR to address the NO_X BART requirements for EGUs in Texas, we did not finalize that portion of our proposed Texas FIP given the uncertainty arising from the remand of the CSAPR budgets for Texas and other states.[194] In light of the above, the comments that we are treating Arkansas differently than other states where EPA relied on CSAPR to meet the BART requirements are no longer applicable.

As we have noted throughout this document, we are willing to work with ADEQ to develop a SIP revision that could replace our FIP. Such a SIP revision will need to meet the CAA and EPA's Regional Haze regulations. In its SIP revision, ADEQ may elect to rely on CSAPR to satisfy the NO_X BART requirements for Arkansas' EGUs instead of doing source-specific NO_X BART determinations. Such an approach could be appropriate if, as we expect, the uncertainty created by the D.C. Circuit's remand of the affected states' emission budgets will shortly be resolved.

With regard to the comment that we should not require EGUs that are covered under CSAPR to also install additional emissions controls under reasonable progress analysis, we disagree. In our 2012 finding that CSAPR is better than BART, we stated that states with EGUs covered under CSAPR may rely on CSAPR to satisfy the BART requirement. However, controls under reasonable progress are a separate requirement from BART, and we disagree that states can rely on CSAPR to satisfy the reasonable progress requirements under § 51.308(d)(1). As explained in the 2005 rulemaking addressing reliance on CAIR, our determination that a trading program provides for greater reasonable progress than BART is not a determination that the trading program satisfies all reasonable progress requirements.[195]

I. Cost

We received numerous comments related to the cost analyses we proposed. These comments were received from both industry and environmental groups, and covered all aspects of our cost analyses.

We received comments from industry concerning our proposed scrubber cost analyses that objected to our use of the IPM cost algorithms that Sargent and Lundy (S&L) developed under contract to us. As we discuss in our TSD, we programmed the Spray Dryer Absorber (SDA—a type of dry scrubber), and wet FGD cost algorithms, as employed in version 5.13 of our IPM model, into spreadsheets in our analysis of various aspects of the Entergy White Bluff and Independence scrubber cost analyses.[196] Industry stated these cost algorithms were not accurate enough to warrant their use in individual unit-by-unit cost analyses, do not consider site-specific costs, and that our use of them violated our Control Cost Manual. Environmental groups supported our use of the IPM cost algorithms, and employed them as well in costing scrubber and SCR control costs to support their own comments. In response, we conclude that the IPM cost algorithms provide reliable, study-level, unit-specific costs for regulatory cost analysis such as required for BART and reasonable progress.[197]

We received comments relating to our critique of Entergy's White Bluff dry scrubber cost analysis. These primarily involved claims that we (1) improperly escalated Entergy's own cost analyses, (2) improperly excluded costs, (3) under-estimated O&M costs, (4) improperly calculated the SO_2 baseline, (5) improperly excluded ''Allowance for Funds Used During Construction''

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[187] 40 CFR 51.308(e)(2).

[188] 70 FR 39104, 39156 (July 6, 2005).

[189] *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[190] 77 FR 33642.

[191] As Arkansas did not rely on CAIR to satisfy requirements in the regional haze SIP, Arkansas is not included in the EPA's limited disapproval of regional haze SIPs that relied on CAIR to satisfy certain regional haze requirements. See 77 FR 33642, at 33654. In that same rulemaking, the EPA promulgated FIPs to replace reliance on CAIR with reliance on CSAPR in many of those regional haze SIPs; however, Arkansas was likewise not included in that FIP action.

[192] 795 F.3d 118 (DC Cir 2015).

[193] *https://www3.epa.gov/airtransport/CSAPR/pdfs/CSAPR_SO₂_Remand_Memo.pdf.*

[194] 81 FR 296, 302.

[195] 70 FR 39104, 39143; see also 77 FR 33642, 33653.

[196] See discussion beginning on pages 9 and 20 of our TSD Appendix A.

[197] We believe that the IPM cost algorithms provide study level accuracy. See pdf page 17 of our Control Cost Manual: ''[a]''study'' level estimate [has] a nominal accuracy of ± 30% percent. According to Perry's Chemical Engineer's Handbook, a study estimate is '. . . used to estimate the economic feasibility of a project before expending significant funds for piloting, marketing, land surveys, and acquisition . . . [However] it can be prepared at relatively low cost with minimum data.'''

(AFUDC) and owner's costs, and (6) improperly extended our White Bluff scrubber cost analyses to the Independence facility. In response to these comments, we have made some minor adjustments to our White Bluff scrubber cost analyses, but those changes do not change our proposal that scrubbers remain cost-effective for the White Bluff facility, and by extension to the Independence facility.

We received comments from environmental groups concerning the White Bluff, Independence, and Flint Creek facilities that (1) generally supported our proposed control suite, (2) criticized us in some cases for not proposing stricter control levels, (3) criticized our control cost analyses for being too conservative in some cases and/or containing errors, and (4) criticized us in some cases for not requiring earlier compliance. These groups also generally opposed our BART determination for Lake Catherine Unit 4.

Below we present a summary of our responses to the more significant comments we received that relate to our proposed cost analyses.

Comment: S&L states we significantly under-estimated the direct Operating and Maintenance ("O&M") costs projected for the scrubbers by using its Integrated Planning Model ("IPM") Spray Dryer Absorber ("SDA") cost model to scale the O&M costs rather than estimating these costs using current utility pricing information. S&L stated that our use of the IPM cost algorithms was not in keeping with our Control Cost Manual and because of the limited number of site-specific inputs, the IPM cost algorithms provide order-of-magnitude control system cost estimates, but do not provide case-by-case project-specific cost estimates meeting the requirements of the BART Guidelines, nor do the IPM equations incorporate the cost estimating methodology described in the Control Cost Manual.

Response: We disagree with S&L. As we discuss in our TSD,[198] we needed to adjust Entergy's O&M costs for its White Bluff SDA model because of a mismatch between Entergy's SO_2 emission baseline and the SO_2 inlet it assumed in the design of its scrubber (discussed in our response to another comment). Entergy costed a scrubber capable of treating a SO_2 level of 2.0 lbs/MMBtu, when it historically burned coal that averaged less than 0.6 lbs/MMBtu from 2009–2013. This had the effect of worsening the cost effectiveness (increasing the $/ton) over what it would have been had Entergy designed it to treat the coal it historically burned. We could not directly adjust Entergy's O&M costs because Entergy's O&M cost estimates were based on an S&L economic model from May 2008, which it did not supply.[199] These issues, which we discuss in our responses to comments elsewhere, dictated a revision to Entergy's cost estimate. We were left with no choice but to seek an alternative means of estimating Entergy's O&M costs, in order to address the mismatch described above. We utilized the IPM SDA cost model that Entergy's own contractor designed for us.

We disagree that our cost estimates were not in keeping with the Control Cost Manual. As we stated in our TSD Appendix A, we relied on the methods and principles contained within the Control Cost Manual, namely the use of the overnight costing method. In fact, the Control Cost Manual does not include any method for estimating the costs specific to any of the SO_2 control equipment evaluated in this action. We note our technique of relying on a publicly available control cost tool is similar to the strategy the states themselves employed in the development of their SIPs. For instance, as explained in the Texas SIP, the ADEQ used the control strategy analysis completed by the CENRAP, which depended on the EPA AirControlNET tool[200] to develop cost per ton estimates. We have used IPM cost models to estimate BART costs in other similar rulemakings including our Arizona Regional Haze FIPs,[201] the Wyoming Regional Haze FIP,[202] and to supplement our analysis in the Oklahoma FIP.[203] S&L used real world cost data to construct its cost algorithms and confirm their validity. These cost models have been updated and maintained since their introduction in 2010 and we have been continuously using them since that time. These control costs are based on databases of actual control project costs and account for project specifics such as unit size, coal type, gross heat rate, and retrofit factor. The costs further require unit specific inputs such as reagent cost, waste disposal cost, auxiliary power cost, labor cost, gross load, and emission information. We believe that the IPM cost models provide reliable study-level, unit-specific costs for regulatory cost analysis such as required for BART and reasonable progress. We are confident enough in the basic methodology behind the S&L cost algorithms that in our recent update of the SCR chapter of the Control Cost Manual[204] we presented an example costing methodology that is based on the IPM S&L SCR algorithms, which were developed using a similar methodology to the wet FGD, SDA, and DSI cost algorithms discussed herein. Lastly, we note that Entergy used a number of general approximations when estimating the wet scrubbing costs for White Bluff, as we describe in our TSD.[205] We conclude that our approach is in keeping with the Control Cost Manual and is sufficiently accurate for its intended purpose.

Comment: Entergy disagreed with our approach for escalating a 2013 scrubber cost analysis for its White Bluff facility to 2015, rather than obtaining a revised cost estimate. Entergy claims this caused us to underestimate our scrubber cost estimate by $36,322,881 (total for both units). Entergy also disagreed with our application of the Chemical Engineering Plant Cost Index (CEPCI) indices in several instances from 2008 that de-escalated costs, resulting in lower costs in 2013 as compared to 2008. Entergy states that our cost calculations ignored the updated 2012 direct annual costs it provided, and instead included the 2008 costs. In a subsequent comment, Entergy calculates an escalation rate of 4.7%, based on a comparison of a revised 2013 quote to a 2009 quote, and applies that escalation rate along with other corrections to various cost line items in concluding that we underestimated the cost of installing scrubbers at the White Bluff facility by $42,607,547 per unit.

Response: For our proposal, we used Entergy's revised BART analysis for the White Bluff facility, as submitted by it on October 14, 2013, because at the time it was the latest information available to us.[206] In our proposal, our control cost analysis used the same basic information that Entergy previously presented to us in 2013. As we describe in Appendix A of our TSD, Entergy stated that it received two different SDA cost estimates for White Bluff: An early 2009 Sargent and Lundy (S&L) estimate with a total contractor cost of $291,930,000, and a December 2009 estimate from Alstom of $247,856,184. Entergy stated that unlike the S&L quote, the Alstom estimate was not itemized and only included a total price. Entergy used the 2009 Alstom price quote as the basis for its BART cost analysis for White Bluff by increasing it by 10%, and scaling the S&L itemized cost to match the 110% adjusted Alstom total price. As we describe in our RTC, we critiqued certain aspects of Entergy's use of this information. For example, Entergy mistakenly included certain NO_X controls in its 2013 cost analysis. It also failed to document certain BOP costs that we had no choice but to exclude. However, between the 2009 S&L and the 2009 Alstom quotes, and with these corrections, we were able to construct a reasonable control cost estimate. In so doing, we used the same 2009 Alstom total, and the Alstom payment schedule for its quote, as the actual Alstom quote was not supplied and no better information was presented by Entergy. Because Entergy's 2013 cost estimate used 2009 Alstom pricing, we had no choice but to escalate it to 2013—more recent information was not available.

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[198] See Section 3.1 in Appendix A of our TSD.

[199] See Section 2.7 in Appendix A of our TSD.

[200] Our AirControlNET tool is out of date and no longer supported.

[201] 77 FR 42852 (July 20, 2012).

[202] Memorandum from Jim Staudt to Doug Grano, EPA, Re: Review of Estimated Compliance Costs for Wyoming Electricity Generating Units (EGUs)—Revision of Previous Memo, February 7, 2013, EPA–R08–OAR–2012–0026–0086_Feb 7, 2013.

[203] 76 FR 81728 (December 28, 2011).

[204] *https://www3.epa.gov/ttn/ecas/cost_manual.html.*

[205] See discussion beginning on page 19 of Appendix A to our TSD.

[206] See section 2.1 of Appendix A to our TSD.

Entergy did not provide its updated 2015 cost estimate, which it references in its comment, until after our proposal. Entergy's 2015 report uses updated 2013 pricing from Alstom as its basis. As we discuss in our RTC, we reviewed this 2015 cost analysis and found that it presents problems that prevent us from using it, primarily because it is undocumented.

In this comment, Entergy attempts to use its newly submitted 2015 cost analysis to discredit the escalation technique we employed to adjust its previous 2013 cost analysis. It does so without even presenting the 2013 Alstom quote on which it states the 2015 cost estimate relies. Thus, we have no basis to conclude that the costs Entergy presents in its first table above even cover the same scope of work. This is an important consideration and a different scope can cause a significant difference in cost. Entergy itself noted this when it used a revised BOP estimate to adjust its 2009 Alstom quote because the scope had changed. Even different cost estimates received in the same year can result in significantly different totals. For instance, as we also note in our TSD, Entergy stated that it received two different SDA cost estimates for White Bluff: An early 2009 S&L estimate with a total contractor cost of $291,930,000, and a December 2009 estimate from Alstom of $247,856,184.[207] We note that the difference between these two quotes is $44,073,816, which is more than Entergy calculates in its first table above is the difference between our escalated 2013 quote ($261,581,119) and its revised 2015 cost estimate, based on the its 2013 Alstom quote ($297,904,000).

Escalation from one year's cost basis to another[208] is not only allowed by the Control Cost Manual, it is a required procedure in order to allow an apples-to-apples comparison between control cost analyses. Our use of the Chemical Engineering Plant Cost Index (CEPCI) is a standard method of escalating costs,[209] and one that power companies have also used on numerous occasions. Entergy itself has used the CEPCI in an attempt to escalate its costs. Unfortunately, as we explain in our TSD, Entergy did so incorrectly and we corrected that error.[210] We certainly prefer revised vendor quotations to escalating older cost estimates. However, when revised vendor quotes are not available as in this case, we have no choice but to escalate older cost estimates in order to bring the cost basis to the present.

Entergy also apparently objects to any escalation technique that results in a reduction in a future year's cost basis, holding it up as evidence of our error.[211] This is a fundamental misunderstanding of escalation. For instance, although the Composite CE index usually increases from year to year, it does occasionally decrease, due to various broad economic factors, such as it did from 2008 to 2009, and again from 2011 to 2013. This is mainly due to broad economic factors that influence the cost of raw materials, supply and demand, vendor profit, etc. Thus, Entergy's objection over the "de-escalation" of cost from 2008 to 2013 is entirely misplaced. In other words, escalation is escalation: Most of the time it is positive but sometimes it is negative. We therefore do not agree with Entergy's objections to our escalation technique. We take up the issue of Entergy's 2015 cost estimate in our response to another comment.

Entergy states that our cost calculations ignored the updated 2012 direct annual costs provided by Entergy, and instead included the 2008 costs. As noted in the first sentence of our response to this comment, we were constrained to use Entergy's revised BART analysis for the White Bluff facility, as submitted by Entergy on October 14, 2013 (hereafter referred to as the "2013 SDA Cost Analysis"). These costs employed a 2008 vintage total direct annual cost, as we indicate in Appendix A of our TSD.[212] Regarding its direct annual costs, Entergy further states, "The cost estimates were scaled to reflect 2012 dollars."[213] We therefore agree that Entergy did provide what it stated was 2012 vintage direct annual costs. We did not use those costs because Entergy incorrectly escalated them from 2008, as we discuss above. For instance, Entergy presented its 2008 direct annual cost as $7,901,369. It then "scaled" them to 2012 using a 2008 CEPCI index of 530.7 and a 2012 CEPCI index of 593.6, resulting in a 2012 value of $8,837,861. As we discuss in Appendix A of our TSD, Entergy appears to have incorrectly used the January monthly CEPCI value for each year instead of the annual CEPCI value. Entergy should have used a 2008 CEPCI index of 575.4 and a 2012 CEPCI index of 584.6, resulting in a 2012 escalated direct annual cost of $8,027,703 ($7,901,369 × 584.6/575.4). As we also discuss in our TSD, because we were conducting our analysis later, we escalated Entergy's 2008 direct annual cost to 2013, resulting in a value of $7,790,140 ($7,901,369 × 567.3/575.4). These facts appear to have been ignored by Entergy in its comment. We therefore have no choice but to disagree with Entergy's comment concerning our not using its 2012 direct annual cost.

Comment: Entergy and Nucor stated that we improperly excluded AFUDC and owner's costs from our White Bluff control cost analysis. Entergy also objects to our disallowance of certain BOP costs.

Response: As we have noted in a number of our FIPs, AFUDC and Owner's Costs are not valid costs under our Control Cost Manual methodology. We invite the commenters to examine our response to similar comments we received in response to those actions.[214]

In Appendix A to our TSD, we noted that Entergy used BOP costs from a 2008 S&L quote to supplement its adjusted 2009 Alstom quote in its 2013 SDA cost analysis for the White Bluff BART determination. However, due to a lack of documentation, it appeared that a number of items were either not appropriate for a SO_2 scrubber, or were already covered as part of the Alstom quote. As discussed in detail in our RTC document, we removed those items from our proposed SDA cost analysis and invited Entergy to supply additional documentation to verify these costs. S&L now points to an S&L Report #012831, which contains a 2015 White Bluff SDA cost estimate, for that documentation. First, Entergy states that its 2015 SDA cost estimate is based on a 2013 Alstom quote. As with the 2009 Alstom quote it used to support its 2013 SDA cost analysis, Entergy did not provide this Alstom quote. Consequently, we have no way of verifying Entergy's 2015 cost calculations or to conclude that their scopes are the same. Therefore, we have no choice but to conclude that Entergy has not demonstrated that our removal of costs associated with the reagent preparation enclosure and reagent handling system and ductwork was incorrect. Similarly, we continue to find that Entergy has not documented certain BOP indirect costs, miscellaneous contract labor, Entergy internal costs, and capital suspense.

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[207] See section 2.1 of Appendix A to our TSD.

[208] Note that escalation during the construction period is disallowed, however, because that is not a part of the overnight method.

[209] Vatavuk, William, M., "Updating the CE Plant Cost Index," Chemical Engineering, January 2002.

[210] See section 2.6 of Appendix A to our TSD.

[211] Entergy's reference to de-escalated costs.

[212] See section 2.7 of Appendix A to our TSD.

[213] Revised Bart Five Factor Analysis, White Bluff Steam Electric Station, Redfield, Arkansas (AFIN 35–00110). Appendix A, SDA cost analysis, June 2013, Appendix A.

[214] See, *e.g.*, "Response to Technical Comments for Sections E through H of the **Federal Register** Notice for the Oklahoma Regional Haze and Visibility Transport Federal Implementation Plan," Docket No. EPA–R06–OAR–2010–0190, 12/13/2011.

We do agree that Entergy has provided documentation for other costs, including demonstrating that recalibration of the CEMS and painting of the chimney are justified, and we have adjusted our White Bluff scrubber cost analysis accordingly. Other costs that were calculated as percentages of the equipment, material, and labor costs were similarly adjusted. We have revised our cost analysis to include these adjustments, and have determined that dry scrubbers are estimated to cost \$2,565/SO_2 ton removed at Unit 1 and \$2,421/SO_2 ton removed at Unit 2.[215] Revising these costs did not change our final determination that dry scrubbers are cost-effective for the White Bluff facility.

Comment: S&L objects to our approach of calculating an SO_2 baseline for the White Bluff and Independence facilities, in which we eliminated the high and low annual emission values from 2009 to 2013, and averaged the remaining values. S&L presents four alternative approaches in which a straight five year average from 2009 to 2013, and different three year averages from 2009 to 2013 are examined for White Bluff Units 1 and 2 and Independence Units 1 and 2, and concludes that in all cases, at least one of the alternative approaches would have resulted in lower baseline SO_2 emissions for one of the units.

Response: We disagree with S&L that we erred in the procedure we used in estimating baseline emissions for our BART and reasonable progress scrubber upgrade cost analyses. We calculated our baseline SO_2 emissions by first acquiring the 2009 to 2013 emissions as reported to us by the facilities in question.[216] We reasonably eliminated the high and low values from the 2009–2013 emissions to better address potential yearly variations in in coal sulfur data, capacity usage, etc., and to make the baseline more representative of plant operations and thereby provide the basis for a more accurate estimate of the cost effectiveness of controls. The fact that S&L can construct alternative approaches to our baseline calculation that result in lower emissions estimates does not invalidate our BART and reasonable progress approaches. As can be seen from an examination of S&L's own data, regardless of whether a 3-year average or a 5-year average of a particular set of years is employed, the resulting emissions baselines are all similar. In fact, for three out of four units, one of S&L's alternative approaches would have produced higher SO_2 emissions baselines, which if used would have resulted in the cost analyses we performed being even more cost-effective. We believe that the procedure we used is in compliance with the BART Guidelines, which states:

> How do I calculate baseline emissions?
>
> 1. The baseline emissions rate should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions based upon actual emissions from a baseline period.
>
> 2. When you project that future operating parameters (*e.g.,* limited hours of operation or capacity utilization, type of fuel, raw materials or product mix or type) will differ from past practice, and if this projection has a deciding effect in the BART determination, then you must make these parameters or assumptions into enforceable limitations. In the absence of enforceable limitations, you calculate baseline emissions based upon continuation of past practice.[217]

Regarding the baseline used in our Independence reasonable progress analysis, our 2007 Reasonable Progress Guidance notes the similarity between some of the reasonable progress factors and the BART factors contained in § 51.308(e)(1)((ii)(A), and suggests that the BART Guidelines be consulted regarding cost, energy and nonair quality environmental impacts, and remaining useful life.[218] We are therefore relying on our BART Guidelines for assistance in interpreting those reasonable progress factors, as applicable. One of these areas is in the calculation of the baseline emissions in determining cost effectiveness.

The difference between our baseline calculations and any of the alternative procedures S&L outlines is small and would not change our conclusions for the White Bluff BART determinations and the Independence reasonable progress determinations.

Comment: S&L objects to our extending our White Bluff scrubber cost analysis to the Independence facility on the basis of the similarity of the two facilities. S&L states that our use of EIA information, satellite photographs and other points of comparison are inadequate to account for potential site-specific differences between the two facilities, such as operating data, O&M practices, underground utility interferences, geotechnical differences, and seismic differences.

Response: While there are likely differences between the two facilities that would have some minor impact on the scrubber cost analyses, we reasonably concluded based on the information available to us that there were enough similarities between the facilities to make our approach appropriate. As we discuss in our TSD:

> The White Bluff and Independence facilities are sister facilities. According to EIA,[219] the boilers were manufactured by Combustion Engineering with in-service dates of 1980 and 1981 for White Bluff, and 1983 and 1985 for Independence. All four units are tangentially firing boilers having nameplate capacities of 900 MW and similar gross ratings. As we indicate above, all four units burn coal from the Powder River Basin of Wyoming with similar characteristics. All four units employ cold side electrostatic precipitators for particulate collection. Other pertinent characteristics are similar.[220]

We further presented satellite photographs to demonstrate that the layout of these facilities are extremely similar. We consequently expect that the differences Entergy describes in its comments result in minor differences in the cost to install and operate scrubbers. As we have discussed in our response to another comment, the Control Cost Manual explains that the sole input required for making an "order of magnitude" estimate is the control system's capacity (often measured by the maximum volumetric flow rate of the gas passing through the system). Such an estimate, for example, could be obtained from the cost reported in dollars per megawatt ($/MW) or dollars per million BTUs fired ($/MMBtu), metrics that are widely reported in the literature. The Control Cost Manual indicates that "the costs and estimating methodology in this Manual are directed toward the 'study' estimate with a nominal accuracy of +/−30% percent." This is the long-standing rule of thumb for cost estimate accuracy used by the EPA for regulatory cost effectiveness analyses. We see nothing in Entergy's comments that would suggest that the differences between these two facilities are so significant they would impact this required level of accuracy. Indeed, Entergy does not attempt to estimate the capital costs of these differences or otherwise provide a cost estimate specific to the Independence facility in support of its argument that it was inappropriate for us to extend our White Bluff scrubber cost analysis to the Independence facility.

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[215] See the file, "White Bluff_R6 cost *revisions2-revised.xlsx*" in our docket.

[216] *http://ampd.epa.gov/ampd/*

[217] 70 FR 39104, 39167.

[218] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," at 5–1.

[219] See "EIA Consolidated Data_WB and IND_Y2012.xlsx."

[220] See document titled "AR RH FIP TSD Appendix A—White Bluff and Independence SO_2 Cost Analysis," found in the docket for this rulemaking.

Comment: Entergy objects to our correction to its White Bluff scrubber control cost analysis to adjust the cost for a scrubber designed to treat a 2.0 lb/MMBtu coal to 0.68 lbs/MMBtu to account for the lower sulfur coal it has historically burned. Entergy states that we correctly assumed that the 2.0 lb/MMBtu design basis for the White Bluff scrubber was to preserve fuel flexibility, but our conclusions that, "either (1) this higher cost be balanced against its greater SO_2 reduction potential, or (2) that the scrubber system's capability and cost be adjusted down to match the facility's historical emissions" are without basis and inconsistent with the BART guidelines. Entergy also concludes that its assumption that a 2.0 lb/MMBtu scrubber inlet was in error and a 1.2 lb/MMBtu inlet assumption is now appropriate. Entergy presents SO_2 emission data in support of its position that our 0.68 lbs/MMBtu coal assumption was incorrect and recalculates its O&M and capital costs. Lastly, Entergy states that in correcting its scrubber control cost analysis to account for a 0.68 lbs/MMBtu coal, we misapplied a correction factor to our total direct and indirect costs.

Response: As we noted in our TSD, "either (1) this higher cost be balanced against its greater SO_2 reduction potential, or (2) that the scrubber system's capability and cost be adjusted down to match the facility's historical emissions." Entergy chose to do neither and costed a scrubber capable of treating a coal far in excess of what it historically burned, but continued to base the capabilities of the scrubber on its historical SO_2 baseline. Thus, either Entergy's annualized cost (the "$") or its tons reduced (the "tons") in the $/ton cost effectiveness calculation are misrepresented. Our approach was to recalculate Entergy's scrubber cost to bring its scrubber design in line with the coal it has historically burned. Entergy could have taken the alternative approach of calculating a new baseline on the basis of its higher sulfur design coal, but it chose not to do so. We see nothing in Entergy's comments that would cause us to conclude our reasoning was in error. With regard to Entergy's concerns with the 0.68 lbs/MMBtu baseline that we use, it appears the SO_2 emission data Entergy presented was hourly data, which should not be used to design a scrubber that would have to meet a 30–BOD average. Our analysis indicates the individual hourly data fluctuations Entergy presents are inconsequential. Further, an examination of the running 30–BOD average indicates that our decision to fix the mismatch between Entergy's scrubber costs and its historical SO_2 baseline on the basis of a SO_2 inlet of 0.68 lbs/MMBtu is reasonable.

In apparent agreement with our basic approach, Entergy recalculates its variable and fixed O&M costs on the basis of 0.68 lb/MMBtu fuel sulfur levels. We note that our own variable and fixed O&M costs are actually greater, adding to the conservativeness of our calculation. To illustrate the small difference in capital costs associated with the revised design basis (1.2 lb/MMBtu versus 0.68 lb/MMBtu), Entergy then performs a sensitivity analysis and concedes there is a "small difference in capital costs associated with the revised design basis (1.2 lb/MMBtu versus 0.68 lb/MMBtu). . . ." This conclusion is borne out by our own figures, which indicate there is a small difference in capital costs to even the 2.0 lbs/MMBtu case; the capital, engineering and construction costs, which cover the fundamental design parameter of a scrubber—gas flow rate—were only changed by less than 5%. In sum, Entergy's assertion that our cost analysis improperly designed the White Bluff scrubber system is without merit and would make an insignificant difference in the final outcome.

Lastly, we agree with Entergy that we misapplied a correction factor to our total direct and indirect costs. We incorporate that correction in our final SDA cost analysis for the White Bluff and Independence facilities, which we discuss in more detail in our response to other comments. This correction has a relatively minor impact on the overall cost analysis.

Comment: The Sierra Club supported our proposal regarding SO_2 for the White Bluff and Independence facilities, but concluded that our proposed SO_2 emission rate of 0.06 lbs/MMBtu on a 30–BOD average should have been stricter at 0.04 lbs/MMBtu, based on wet scrubbing. The Sierra Club also agrees with our assessment that Entergy included undocumented costs in its White Bluff scrubber cost estimate.

The Sierra Club's consultant performed a cost analysis of dry and wet scrubber systems, including Alstom's NID circulating dry scrubber, and concluded that our White Bluff scrubber cost analysis was conservative, that scrubbers are cost effective compared to controls required pursuant to other BART determinations, and that we should have required compliance in 3 years instead of 5 years.

Response: We confirm that we intended to construct conservative cost estimates. With some minor disagreements with the Sierra Club, we generally agree that an independent cost analysis such as it presents does support our basic position that scrubbers are cost effective at both the White Bluff and Independence facilities. However, as we discuss in our RTC document, we disagree that in this specific instance wet scrubbers are more cost effective than dry scrubbers. Our scrubber cost analyses was built off of the analyses supplied by Entergy, and we determined that wet scrubbers were significantly less cost effective—again, in the specific cases of the White Bluff and Independence facilities for BART and reasonable progress respectively. We disagree with the SO_2 baseline Sierra Club uses in its cost analysis, rendering its scrubber cost analysis and ours not directly comparable. Consequently, we disagree that an SO_2 emission rate of 0.04 lbs/MMBtu averaged over a 30-boiler-operating-day period, based on a wet scrubber cost analysis, is appropriate for either the White Bluff or Independence facilities. We agree that in some cases scrubbers can be installed in less than the 5 years that we proposed. However, this is site-specific and, in this case, we have found that installation within 5 years is as expeditious as practicably possible.

We agree that the Alstom NID circulating dry scrubber is a promising SO_2 control option. We reviewed NID in our preliminary work but ultimately decided not to evaluate it as a control because we had no relevant operating data and no method to estimate costs.

After addressing all comments from Entergy and the Sierra Club concerning our White Bluff and Independence scrubber cost analyses, we made several minor corrections.[221] Below we summarize those corrections:

TABLE 18—CORRECTIONS TO OUR COST-EFFECTIVENESS CALCULATIONS FOR DRY FGD FOR WHITE BLUFF AND INDEPENDENCE

Unit	Proposed cost-effectiveness ($/ton)	Final cost-effectiveness ($/ton)
White Bluff Unit 1	$2,227	$2,565
White Bluff Unit 2	2,101	2,421
Independence Unit 1	2,477	2,853
Independence Unit 2	2,286	2,634

We find that these revised cost-effectiveness calculations do not change our proposed findings for BART and reasonable progress for these units.

In addition, we have examined the effect of adding back in a number of the BOP and other costs we excluded (based on these costs being either disallowed by the Control Cost Manual, or having lacked documentation from Entergy). This exercise also appears in the file "White Bluff_R6 cost revisions2-revised.xlsx." These costs include:

- BOP Costs associated with the reagent prep enclosure and the reagent handling system, totaling $21,229,000.
- BOP Costs associated with the flue gas system ductwork, totaling $1,754,000.
- BOP indirect costs of $8,474,666 (escalated to 2013).
- Miscellaneous contract labor costs of $4,448,074 (escalated to 2013).
- Entergy internal costs of $19,482,518 (escalated to 2013).
- Capital suspense costs of $8,101,226 (escalated to 2013).

TABLE 19—ALTERNATE COST-EFFECTIVE CALCULATIONS FOR DRY FGD ON WHITE BLUFF AND INDEPENDENCE

[Include disallowed costs]

Unit	Alternate cost-effectiveness ($/ton)
White Bluff Unit 1	$3,013
White Bluff Unit 2	2,843
Independence Unit 1	3,351
Independence Unit 2	3,093

We continue to believe that these costs are either disallowed by the Control Cost Manual, or are properly disallowed because they lack documentation from Entergy. We have presented this information to indicate that these disallowed costs have a relatively minor effect on the final cost effectiveness. Although our final decision regarding BART and reasonable progress for the White Bluff and Independence units does not rest upon these cost-effectiveness calculations that include the disallowed costs, had our final decision rested on these cost-effectiveness calculations, we would have reached the same conclusions regarding BART and reasonable progress for these units.

Comment: The Sierra Club stated that the NO_X emission limit of 0.15 lbs/MMBtu based on LNB/SOFA we proposed for White Bluff Units 1 and 2 does not satisfy BART. The Sierra Club asserted that NO_X BART for these units should have been based on SCR. The Sierra Club's consultant concluded that we overestimated the costs of SCR and underestimated the visibility benefits of SNCR and SCR. The consultant's conclusions are based on cost-effectiveness calculations developed by the consultant, which rely on the S&L IPM SCR Cost Module and assume an achievable NO_X emission rate of 0.04 lb/MMBtu for LNB/SOFA plus SCR. The Sierra Club stated that LNB/SOFA can be installed in much shorter timeframe than the 3 years we proposed. The Sierra Club also stated that we should have evaluated SNCR and SCR for the Independence facility.

Response: We have a number of disagreements with the Sierra Club's consultant concerning the SCR cost analysis provided, including the NO_X baseline and the emission limit, which are outlined in detail in our RTC document. After addressing those issues, we do not believe that the cost effectiveness of SCR or SNCR fall within a range that justifies the relatively small incremental visibility improvement (over our NO_X BART determination based on LNB/SOFA) that would result from the installation of SNCR or SCR at the White Bluff facility. As we discussed in our proposal,[222] our modeling indicated that the visibility improvement at several Class I areas from the installation of LNB/SOFA at the Independence facility was of a similar magnitude as the same controls at the White Bluff facility, and cumulatively (*i.e.*, at all Class I areas combined) the visibility improvement of the controls at Independence was lower than at White Bluff. Therefore, we reasoned that since White Bluff and Independence are sister facilities with near identical units, the cost effectiveness of SCR or SNCR at Independence would likely not fall within a range that justifies the relatively small incremental visibility improvement (over LNB/SOFA) that would result from installation of these controls. Therefore, we did not evaluate SCR or SNCR controls for Independence. As we discuss in a separate response, after carefully considering the comments we have received, we are finalizing an 18-month compliance date for the NO_X emission limits we are establishing for White Bluff Units 1 sand 2 under BART and Independence Units 1 and 2 under reasonable progress.

Comment: The Sierra Club and others stated that the costs of both a wet and a dry scrubber are reasonable at the two Independence units. The Sierra noted our proposed costs are reasonable in other reasonable progress determinations that it summarizes. The Sierra Club's consultant independently calculated the costs of scrubbers at Independence Units 1 and 2 and concluded that those calculations confirm that a scrubber is cost-effective. The consultant also noted that the significant visibility improvement from a scrubber at Independence Units 1 and 2 would equal or exceed the visibility improvement from other reasonable progress controls we have previously approved. The Sierra Club's consultant also incorporated comments for the White Bluff facility regarding time for installation and control level.

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[221] Those corrections are contained in the file, "White Bluff_R6 cost revisions2-revised.xlsx," which appears in our docket.

[222] See our supplemental NO_X modeling results for the Independence facility in 80 FR 24872 vs. our NO_X modeling results for the White Bluff facility in 80 FR at 18974.

Response: We take no position on the separate cost analysis that the Sierra Club's consultant has conducted for dry and wet scrubbers and that uses to conclude that our cost analyses are reasonable. We agree that our finding that the control costs are reasonable, given the visibility improvements achieved, is consistent with other EPA actions. We refer the Sierra Club's consultant to our responses to other similar comments regarding the White Bluff facility scrubber concerning control level and installation time.

Comment: The Sierra Club and others stated that our proposal that SO_2 BART for AEP Flint Creek is a NID dry scrubber is appropriate, but argued that a NID dry scrubber is even more cost-effective than what AEP and EPA have estimated. The Sierra Club's consultant presented cost analyses for wet and NID scrubbing for Flint Creek, based on the IPM cost algorithms we used in our recent Texas-Oklahoma FIP. In so doing, the consultant applied the SDA cost algorithm to NID, citing to documentation that indicates that NID may be 1–2% lower in cost to an SDA system. The Sierra Club's consultant argues that both wet and dry scrubbers are capable of even greater levels of control than what we assumed.

Response: As we discuss in our TSD,[223] we noted a number of issues with AEP's NID and wet scrubber cost analyses that if corrected would have resulted in more favorable (lower $/ton) cost-effectiveness values. Nevertheless, even disregarding those errors, we concluded that NID was cost-effective and worth the visibility benefit that will result from its installation. We also determined that wet scrubbing would remain less cost-effective than NID, and was not worth the small additional visibility that would result from its installation in this particular instance.

We extensively analyzed the performance potential of wet scrubbers in our recent Texas-Oklahoma FIP.[224] We concluded that a control level of 98%, not to go below an emission rate of 0.04 lbs/MMBtu on a 30–BOD average, was a reasonable lower level of control. We applied the same reasoning to our Arkansas proposal. As we discuss in our response to another comment, although we regard NID as a promising technology that may in fact be capable of greater levels of control than what we have assumed, there is no real long-term monitoring data to substantiate such a conclusion. Therefore, because we have concluded that in this instance the cost-effectiveness of wet scrubbers is not justified by their relatively small additional visibility benefit, we disagree that SO_2 BART for Flint Creek Unit 1 should be 0.04, based on the performance of a wet scrubber.

Comment: The Sierra Club and others stated that the LNB/OFA proposal for Flint Creek does not satisfy NO_X BART, which should have been based on SCR. The Sierra Club stated that we and AEP used very conservative assumptions that inflated the cost of the SCRs and SNCRs as NO_X BART options for Flint Creek. The Sierra Club's consultant stated that the 20-year life assumed in AEP's SCR cost analysis should have been 30 years, and that the assumed level of control should have been 0.04 lbs/MMBtu. The consultant then performed an SCR control cost analysis and concluded that the cost effectiveness was within a range we have previously found to be acceptable in other BART determinations. The Sierra Club's consultant also stated that AEP overestimated the cost of SNCR because it based it on a reduction of from 0.31 lbs/MMBtu to 0.2 lbs/MMBtu, when in fact, the first-in-line LNB/OFA controls would have already reduced the NO_X to 0.23 lbs/MMBtu, resulting in a lesser loading to the SNCR system and reducing its operating costs.

Response: We note that we provided comments to ADEQ,[225] which included a recommendation that 30 years should be used as an equipment life for SNCR. AEP did not adopt this recommendation in its September 2013 BART analysis for the Flint Creek facility. We agree with the Sierra Club's consultant that AEP overestimated the cost of SNCR because its calculation based it on a reduction of from 0.31 lbs/MMBtu to 0.2 lbs/MMBtu. We have corrected this error, and the error in AEP SWEPCO's assumed 20-year equipment life, and recalculated the SNCR cost effectiveness for Flint Creek. We calculated that SNCR + LNB/OFA has a revised cost-effectiveness of $1,346/ton, as opposed to cost effectiveness of $1,258/ton for LNB/OFA alone. Also, we calculated that the incremental cost effectiveness of SNCR + LNB/OFA over LNB/OFA alone is $1,581/ton. We then re-applied the BART five factors, with emphasis on cost and visibility improvement. The incremental visibility improvement of SNCR + LNB/OFA over LNB/OFA alone is 0.033 dv at Caney Creek and ranges from 0.005 to 0.01 dv at each of the other affected Class I areas. As discussed in our proposal, we consider the incremental visibility improvement of SNCR + LNB/OFA to be relatively small at Caney Creek and to be very small in the remaining three affected Class I areas. We conclude that despite the improvement in the cost-effectiveness of SNCR + LNB/OFA over LNB/OFA alone, under these circumstances the resulting relatively small incremental visibility improvement is still not worth the additional cost of the more stringent controls.

Regarding the Sierra Club's consultant's SCR control cost analysis, we do not believe that a NO_X emission limit of 0.04 lbs/MMBtu has been maintained on a 30 boiler-operating-day average at other similar facilities. We conclude that, as we did in our New Mexico FIP, a 30 boiler-operating-day NO_X average of 0.05 lbs/MMBtu is an appropriate assumption for SCR installation at the Flint Creek facility. We also note that the maximum visibility improvement due to SCR at Flint Creek based on the modeled rate of 0.067 lb/MMBtu was 0.245 dv, which occurred at Caney Creek. If we make reasonable, conservative adjustments to the anticipated visibility benefit, based on a control level of 0.055 lbs/MMBtu rather than the modeled rate of 0.067 lbs/MMBtu,[226] we estimate that the resulting visibility improvement at Caney Creek would be no higher than

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[223] See page 65 of our TSD: "[W]e believe that AEP's escalation of the cost of controls to 2016 dollars has likely resulted in the over estimation of the average cost-effectiveness values. Therefore, we believe a wet scrubber and NID are more cost-effective (*i.e.,* less dollars per ton of SO_2 removed) than estimated by AEP (see table above). However, we did not adjust the cost numbers and cost-effectiveness values because we do not believe that doing so would change our proposed BART determination. We believe that the average cost-effectiveness of both control options was likely over-estimated and the costs associated with a wet scrubber would continue to be higher than the costs associated with NID if the estimates were adjusted, yet the installation and operation of a wet scrubber is projected to result in minimal incremental visibility improvement over NID.

[224] See response to comment beginning on page 310 of our Response to Comments for the **Federal Register** Notice for the Texas and Oklahoma Regional Haze State Implementation Plans; Interstate Visibility Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; and Federal Implementation Plan for Regional Haze, Docket No. EPA–R06–OAR–2014–0754, 12/9/2015.

[225] See email from Dayana Medina to Mary Pettyjohn on 8/21/13.

[226] Modeled emission rates were based on a maximum heat input of 6,324 MMBtu/hr multiplied by the anticipated control rate (*e.g.* 0.067 lb/MMBtu) Baseline emissions determined from 2001–2003 CAMD data were 1,945 lb/hr, approximately 0.308 lb/MMbtu.

0.26 dv.[227] Based on this adjustment, the incremental visibility improvement of SCR + LNB/OFA over SNCR + LNB/OFA is 0.146 dv. Even accepting the Sierra Club's consultant's SCR cost analysis of $3,511/ton (which would be higher were it revised using a controlled NO_X rate of 0.05 lbs/MMBtu) and taking into consideration the adjustments we have made to the cost analysis for SNCR + LNB/OFA, the incremental cost effectiveness of SCR + LNB/OFA over SNCR + LNB/OFA is $4,969/ton. In the context of this BART determination, we do not consider the relatively small incremental visibility improvement to be worth the incremental cost of the SCR installation.

Comment: The Sierra Club and others stated that the Lake Catherine Unit 4 BART analysis failed to accurately consider compliance costs, non-environmental impacts, and the degree of visibility improvement. The Sierra Club further stated we underestimated the cost of BOOS and overestimated the costs of low NO_X burners, over-fired air, SNCR, and SCR. The Sierra Club's consultant also alleges that the documentation to support the Lake Catherine NO_X BART analysis is incomplete. Lastly, the Sierra Club stated that our cost-effectiveness analysis should be based on a capacity calculation that depends on time of operation, and our proposal to use a 10% capacity is unenforceable. Had we used a higher capacity factor, the Sierra Club reasons that the increase in NO_X emissions removed by the various pollution control equipment would have improved their cost-effectiveness (lower $/ton), making them more attractive.

Response: The Sierra Club's consultant raises a number of issues pertaining to missing documentation or errors in Entergy's NO_X BART analysis for Lake Catherine Unit 4, on which we relied on in making our BART decision. We reviewed the issues raised by the Sierra Club's consultant in detail in our RTC document and conclude they are unfounded or lack documentation. We conducted an analysis of Lake Catherine's data on heat input, operational time, and NO_X emissions to investigate the correlation between heat input and operational time to NO_X emissions, and further conclude that capacity calculations for the Lake Catherine Unit 4 should be based on heat input and not operational time. Lastly, we calculate the historical capacity for the Lake Catherine Unit 4 as follows:

TABLE 20—LAKE CATHERINE UNIT 4 HISTORICAL CAPACITY

Year	Capacity factor (%)
2001	28.2
2002	24.2
2003	11.3
2004	3.7
2005	4.7
2006	0.6
2007	0.8
2008	2.3
2009	2.8
2010	3.5
2011	2.9
2012	14.3
2013	11.1
2014	2.0
2015	3.9

We agree that the Lake Catherine Unit 4 historical capacity has sometimes exceeded the 10% capacity Entergy has assumed in its control cost analyses. However, the average from the last ten years of data (2006 to 2015) has been 4.4%. Typically, we place the most emphasis on the last five years of data, and our recent practice has been to discard the high and low values and average the remaining three years.[228] Applying that procedure to the Lake Catherine Unit 4 capacity factor results in a value of 6.0%. Alternatively, calculating a straight average of the last five years results in a value of 6.8%. Thus, we disagree that we erred in accepting Entergy's assumption of a 10% capacity factor in its control cost analysis. We note that in its response to us, Entergy stated, "If future capacity factors change, ADEQ and EPA may impose further NO_X emission reductions on Unit 4, if necessary, in later planning periods to show reasonable progress." We believe that is an appropriate strategy and we will re-examine Lake Catherine's historical capacity in our review of Arkansas' next regional haze SIP.

Comment: We received comments from Nucor, Entergy and Conway Corporation stating that we should have used the dollar per deciview ($/dv) metric to weigh the cost versus the visibility benefit of controls for the White Bluff and Independence facilities. The Sierra Club supported our position that we are not required to use this metric.

Response: The BART Guidelines require that cost effectiveness be calculated in terms of annualized dollars per ton of pollutant removed, or $/ton.[229] The BART Guidelines list the $/deciview metric as an optional cost effectiveness measure that can be employed along with the required $/ton metric for use in a BART evaluation. The metric can be useful in comparing control strategies or as additional information in the BART determination process; however, due to the complexity of the technical issues surrounding regional haze, we have never recommended the use of this metric as a cutpoint or threshold in making BART determinations or reasonable progress determinations. We note that to use the $/deciview metric as the main determining factor would most likely require the development of thresholds of acceptable costs per deciview of improvement for BART and reasonable progress determinations for both single and multiple Class I analyses. We have not developed such thresholds for use in BART or reasonable progress determinations. Generally speaking, while the $/deciview metric can be useful if thoughtfully applied, we view the use of this metric as suggesting a level of precision in the calculation of visibility impacts that is not justified in many cases. While we did not use a $/deciview metric in the BART and reasonable progress determinations we make in this FIP, we did, however, consider the visibility benefits and costs of control together, as noted above by weighing the costs in light of the predicted visibility improvement. We have addressed this issue in a number of our previous actions since we first discussed this issue in our Oklahoma FIP,[230] and our position with regard to the $/deciview metric was reviewed and upheld in *Oklahoma* v. *EPA,* 723 F.3d 1201 by the Tenth Circuit which ruled:

> Oklahoma first suggests EPA should not have rejected the visibility analysis it conducted in the SIP, which used the dollar-per-deciview method. This argument is misguided. The EPA rejected the SIP because of the flawed cost estimates. When promulgating its own implementation plan, it did not need to use the same metric as Oklahoma. The guidelines merely permit the BART-determining authority to use dollar per deciview as an optional method of evaluating cost effectiveness. *See* 40 CFR pt. 51 app. Y(IV)(E)(1).[231] And in the final rule, the EPA

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[227] Modeled visibility benefit at CACR over baseline from SCR at 0.067lb/MMbtu was 0.245 dv. SCR at 0.055 lb/MMBtu would result in an additional reduction in emissions from baseline of only 4%. Assuming a linear relationship between emission and visibility impacts, this would also result in an increase in visibility benefit of only 4%.

[228] This was our approach in calculating the SO_2 baselines used in our recent TX–OK FIP.

[229] 70 FR at 39167.

[230] Response to Technical Comments for Sections E. through H. of the **Federal Register** Notice for the Oklahoma Regional Haze and Visibility Transport Federal Implementation Plan, Docket No. EPA–R06–OAR–2010–0190, 12/13/2011, pdf 116.

[231] We note, however, that in both its final rule and in its brief the EPA asserts that the guidelines

> explained why it did not use the dollar-per-deciview metric used by Oklahoma. "Generally speaking, while the metric can be useful if thoughtfully applied, we view the use of the $/deciview metric as suggesting a level of precision in the calculation of visibility impacts that is not justified in many cases." 76 Fed. Reg. at 81,747. The EPA has never mandated the use of this metric, and has not developed "thresholds of acceptable costs per deciview improvement." *Id.* While the federal land managers have developed thresholds, these thresholds were apparently developed without input from the EPA and without notice-and-comment review. EPA Br. at 54 n. 13. In light of this, we do not find it arbitrary or capricious that the EPA chose not to use the dollar-per-deciview metric in evaluating BART options in creating the FIP. We therefore also conclude that any argument by the petitioners that the dollar-per-deciview measurement proves the scrubbers are not cost effective lacks merit. *See* Pet. Reply Br. at 16.

We see no reason to deviate from our view of the $/deciview metric here.

J. Modeling

1. Cumulative Visibility Impairment

Comment: Several commenters opposed the use of a "cumulative deciviews" or "total" visibility improvement metric and claim the "cumulative deciviews" metric has no basis in the CAA and EPA's regulations. It also allegedly mischaracterizes visibility improvements in Class I areas. Determinations instead should be based on the predicted visibility improvements at individual Class I areas. Furthermore, the cumulative metric is deceptive and provides no information that could be used to assess whether any single Class I area would experience perceivable visibility improvements as a result of BART or reasonable progress controls, and may mask the fact that no individual Class I area would experience any discernible visibility improvement from control of emissions at any particular source. The cumulative metric represents an illusory visibility benefit; it is an improvement that cannot be perceived and therefore provides no indication of whether the proposed controls will contribute to the goal of the regional haze program: To reduce human perception of visibility impairment in Class I areas. The only purpose of the cumulative visibility improvement indicator is to imply that facilities are having a large impact across numerous Class I areas, but this indicator can be deceptive if it includes imperceptible visibility improvements for some Class I areas.

The commenters also suggest that the use of a "total dv" metric is inconsistent with BART guidelines (40 CFR part 51 Appendix Y, IV.D.5) that state it is appropriate to model impacts at the nearest Class I area as well as other nearby Class I areas to determine where the impacts are greatest. Modeling at other Class I areas may be unwarranted if the highest modeled effects are observed at the nearest Class I area. The commenters claim the analysis should be focused on the visibility impacts at the most impacted area, not all areas. Other commenters supported the use of the cumulative visibility metric, stating that it is appropriate and lawful, and within the spirit of the statutory mandate and expressly permissible within the regulation to consider cumulative impacts.

Response: We agree with the comments supporting the consideration of cumulative visibility impacts and benefits. We disagree with the other commenters that cumulative improvement over multiple areas is an inappropriate metric, or that examining a single Class I area is sufficient. The cumulative improvement metric (*i.e.,* the simple sum of impacts or improvements over all the affected Class I areas) is not intended to correspond to a single human's perception at a given time and place. The approach is simply one way of assessing improvements at multiple areas, for consideration along with other visibility metrics. Another approach would be to simply list visibility improvements at the various areas, and qualitatively weigh the number of areas and the magnitudes of the improvements. The cumulative sum is simply an easily understood and objective way of weighing cumulative visibility improvement, as part of the overall control evaluation along with the visibility improvement at each impacted Class I area. As noted by some comments, we have calculated cumulative visibility in a number of Regional Haze actions evaluating the benefits of controls under BART and when visibility is considered in the reasonable progress analysis. Furthermore, the FLMs have provided comments in support of the use of this metric in past actions.[232]

The comment opposing cumulative modeling does not provide the full context when citing to the BART guidelines. The portion referred to by the commenter discusses the development of a modeling protocol and establishing the receptors to model. The full portion of the BART Guidelines that the commenter referenced states:

> The receptors that you use should be located in the nearest Class I area with sufficient density to identify the likely visibility effects of the source. For other Class I areas in relatively close proximity to a BART-eligible source, you may model a few strategic receptors to determine whether effects at those areas may be greater than at the nearest Class I area. For example, you might chose to locate receptors at these areas at the closest point to the source, at the highest and lowest elevation in the Class I area, at the IMPROVE monitor, and at the approximate expected plume release height. If the highest modeled effects are observed at the nearest Class I area, you may choose not to analyze the other Class I areas any further as additional analyses might be unwarranted.[233]

This section of the BART Guidelines addresses how to determine visibility impacts as part of the BART determination. Several paragraphs later in the BART Guidelines it states: "You have flexibility to assess visibility improvements due to BART controls by one or more methods. You may consider the frequency, magnitude, and duration components of impairment," emphasizing the flexibility in method and metrics that exists in assessing the net visibility improvement.

In fully considering the visibility benefits anticipated from the use of an available control technology as one of the factors in selection of BART, it is appropriate to account for visibility benefits across all affected Class I areas and the BART guidelines provide the flexibility to do so. One approach as noted above is to qualitatively consider, for example, the frequency, magnitude, and duration of impairment at each and all affected Class I areas. Where a source significantly impacts more than one Class I areas, the cumulative visibility metric is one way to take magnitude of the impacts of the source into account.

With respect to our analysis of controls under reasonable progress, we rely on our Reasonable Progress Guidance.[234] Our Reasonable Progress Guidance notes the similarity between some of the reasonable progress factors and the BART factors contained in § 51.308(e)(1)((ii)(A), and suggests that

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require the use of the dollar-per-ton metric in evaluating cost effectiveness. The guidelines themselves are a bit unclear. In the section on cost effectiveness, the guidelines mention only the dollar-per-ton metric. 40 CFR pt. 51 app. Y(IV)(D)(4)(c). However, the guidelines later state that in evaluating alternatives, "we recommend you develop a chart (or charts) displaying for each of the alternatives" that includes, among other factors, the cost of compliance defined as "compliance—total annualized costs ($), cost effectiveness ($/ton), and incremental cost effectiveness ($/ton), and/or any other cost-effectiveness measures (such as $/deciview)." Id. app.Y(IV)(E)(1) (emphasis added).

[232] For example, see 76 FR 52388, 52429 (August 22, 2011).

[233] 40 CFR 51 Appendix Y, IV.D.5.

[234] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," June 1, 2007.

the BART Guidelines be consulted regarding cost, energy and nonair quality environmental impacts, and remaining useful life. We are therefore relying on our BART Guidelines for assistance in interpreting those reasonable progress factors, as applicable.

Also, similar to a BART analysis, we are also considering the projected visibility benefit in our analysis following the BART guidelines and the use of CALPUFF.[235] We rely on the BART Guidelines here and in other actions evaluating reasonable progress controls because they provide a reasonable and consistent approach regarding visibility modeling. This includes the flexibility in metrics that exists in assessing the net visibility improvement, and the use of cumulative visibility, along with visibility impacts at individual Class I areas, as one way to take magnitude of the impacts of the source into account where a source evaluated under reasonable progress significantly impacts more than one Class I area.

For each subject-to-BART source and the source evaluated for reasonable progress controls, we evaluated the visibility impacts from the source and benefits of controls at four separate Class I areas. In addition to providing the visibility impacts and potential benefits at each Class I area in the proposal, we also summed the impact and improvement across the four Class I areas. The results show that some sources significantly impact visibility at more than one Class I area, emission reductions result in visibility benefits at all impacted class I areas, and in some situations, the largest visibility benefits from controls can occur at Class I areas other than the most impacted.

Therefore, consistent with the BART Guidelines, and based upon these facts, we determined additional analyses were not only warranted but necessary. The BART Guidelines only indicate that additional analyses may be unwarranted at other Class I areas, and in no way exclude such analyses, as the commenter suggests. We concluded that a quantitative analysis of visibility impacts and benefits at only the most impacted area would not be sufficient to fully assess the impacts and benefits of controlling emissions from the sources evaluated for BART and reasonable progress.

Nothing in the Regional Haze Rule suggests that a state (or EPA in issuing a FIP) should ignore the full extent of the visibility impacts and improvements from controls at multiple Class I areas. Given that the national goal of the program is to improve visibility at *all* Class I areas, it would be short-sighted to limit the evaluation of the visibility benefits of a control to only the most impacted Class I area. We believe such information is useful in quantifying the overall benefit of controls. As discussed in our proposal, we evaluated the statutory factor, visibility benefits anticipated due to controls, at each Class I area in making BART determinations and considered the visibility benefits in consideration of controls for reasonable progress.

2. Imperceptible Visibility Improvement

Comment: EPA must withdraw the proposed FIP because the FIP would only achieve visibility improvements below one deciview, which is not discernible to the naked eye. Commenters state that the CAA only provides EPA with the authority to regulate the "impairment of visibility."[236] Visibility extends only to things that humans can see with their naked eyes.[237] By extension, EPA only has authority to regulate the impairments of visibility that are perceptible to the human eye. Under both the plain language and dictionary definitions of "visibility," the statute does not provide EPA with the authority to regulate haze below a single deciview, which would be invisible to the naked eye. Since the Proposed FIP will only achieve visibility improvements smaller than one deciview, the EPA lacks authority to revise the RPGs suggested by Arkansas, and it should withdraw the Proposed FIP.

Commenters also state that the EPA may not require a source "to spend millions of dollars for new technology that will have no appreciable effect on haze in any Class I area." *Am. Corn Growers Ass'n.* v. *EPA*[238] (vacating EPA's BART determinations because EPA left open the possibility that it could require a source to install technologies even when those technologies had no appreciable effect on visibility). Yet the EPA requires certain stationary sources of immense value to the State of Arkansas and its citizens to install controls that will cost billions of dollars in order to achieve imperceptible visibility improvements.

Response: We disagree with commenters that the Regional Haze Rule requires that controls on a source or group of sources result in perceptible visibility improvement.[239] We believe, for reasons we have outlined in our proposal and elsewhere in our response to comments, that the controls we proposed under our FIP will result in significant improvements in visibility at a number of Class I areas. In a situation where the installation of BART may not result in a perceptible improvement in visibility, the visibility benefit may still be significant, as explained by the Regional Haze Rule:

> Even though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area. Thus, we disagree that the degree of improvement should be contingent upon perceptibility. Failing to consider less-than-perceptible contributions to visibility impairment would ignore the CAA's intent to have BART requirements apply to sources that contribute to, as well as cause, such impairment.[240]

Section 169A of the CAA requires that certain major sources that emit any pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in Class I Areas install BART. The following factors must be taken into account in determining BART: The costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.[241]

The CAA also requires that in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. Our 2007 Reasonable Progress Guidance[242] notes the similarity between some of the reasonable progress factors and the BART factors contained in § 51.308(e)(1)(ii)(A), and suggests that the BART Guidelines be consulted regarding cost, energy and nonair quality environmental impacts, and remaining useful life. We are therefore relying on our BART Guidelines for assistance in interpreting those reasonable progress factors, as applicable, including visibility improvement even though it may not be perceptible from an individual source. Also, similar to a BART analysis, we are also considering the projected visibility benefit in our analysis of reasonable progress controls following the BART guidelines.[243] We rely on the BART Guidelines here and in other actions evaluating reasonable progress controls because they provide a reasonable and consistent approach regarding visibility modeling.

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[235] As we explain in our proposed action (80 FR at 18993): "While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable under the reasonable progress requirements, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, it is appropriate to consider the projected visibility benefit of the controls when determining if the controls are needed to make reasonable progress". See 79 FR at 74838, 74840, and 74874.

[236] CAA section 169A ("Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, *impairment of visibility* in mandatory class I Federal areas which impairment results from manmade air pollution.) (emphasis added).

[237] *E.g.* Webster's Third New International Dictionary 2557 (1981) ("visible" means "capable of being seen"; "visibility" means "the degree or extent to which something is visible . . . [by] the observer's eye unaided by special optical devices").

[238] *Am. Corn Growers Ass'n* v. *EPA,* 291 F.3d 1, 7 (D.C. Cir. 2002).

[239] It is generally recognized that a change in visibility of 1.0 deciview is humanly perceptible.

[240] 70 FR 39104, 39129.

[241] CAA section 169A(g)(2).

We accordingly disagree that selection of control measures under BART or for reasonable progress should be contingent upon perceptible visibility improvement. As we stated in our previous rulemaking addressing the BART determinations in Oklahoma:

> Given that sources are subject to BART based on a contribution threshold of no greater than 0.5 deciviews, it would be inconsistent to automatically rule out additional controls where the improvement in visibility may be less than 1.0 deciview or even 0.5 deciviews. A perceptible visibility improvement is not a requirement of the BART determination because visibility improvements that are not perceptible may still be determined to be significant.[244]

The Regional Haze Rule provides that BART–eligible sources with a 0.5 dv impact at a Class I area "contribute" to visibility impairment and must be analyzed for BART controls. BART determining authorities, however, are free to establish thresholds less than 0.5 dv. Consequently, even though the visibility improvement from controlling an individual source may not be perceptible, it should still be considered because the contribution to haze may be significant when the aggregate contribution of other sources in the Class I area is taken into account and because the contribution to haze from the source may be significant relative to other source contributions in the Class I area. Thus, in our visibility improvement analysis for BART sources and in consideration of visibility benefits from controls under our reasonable progress analysis, we have not considered perceptibility as a threshold criterion for considering improvements in visibility to be meaningful.

We have considered visibility improvement in a holistic manner, taking into account all reasonably anticipated improvements in visibility, and the fact that, in the aggregate, improvements from controls on multiple sources (either under BART or reasonable progress) will contribute to visibility progress towards the goal of natural visibility conditions. Visibility impacts below the thresholds of perceptibility cannot be ignored because regional haze is produced by a multitude of sources and activities which are located across a broad geographic area. In this action, we found that the required cost-effective controls reduce visibility impairment from those BART sources that contribute or cause visibility impairment at nearby Class I areas and result in meaningful visibility benefits towards the goal of natural visibility conditions. Similarly, we also found that the required cost-effective controls at the Entergy Independence facility reduce visibility impairment from the source with the largest potential visibility impacts (among all Non-BART sources) and result in meaningful visibility benefits towards the goal of natural visibility conditions.

The commenter mischaracterizes a statement made by the D.C. Circuit Court of Appeals in *Am. Corn Growers Ass'n.* v. *EPA.* The statement made by the Court is as follows: "[U]nder EPA's take on the statute, it is therefore entirely possible that a source may be forced to spend millions of dollars for new technology that will have no appreciable effect on the haze in any Class I area." [245] The Court made this statement in reviewing EPA's approach to the BART requirements in the Regional Haze Rule promulgated in 1999 which did not require the source-specific assessment of a BART eligible source's visibility impacts at any step of the BART process.[246]

The Court disagreed with the approach used by EPA to determine what BART eligible sources are reasonably anticipated to cause or contribute to regional haze and therefore subject to BART.[247] The approach in the Regional Haze Rule required a State to analyze "the degree of visibility improvement that would be achieved in each mandatory Class I Federal area as a result of the emission reductions achievable from all sources subject to BART located within the region that contributes to visibility impairment in the Class I area." [248] The Court held that the Rule's treatment of "the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology" factor infringed on states' authority with respect to BART determinations under the Act.[249] The Court noted that the Act does not assign a specific weight with which to consider each factor, it solely mandates that all the factors be considered in making a BART determination.[250] The Court's issue was not with the weight, or lack thereof, placed on this factor by EPA. It found issue with what it considered to be "dramatically" different treatment of the visibility factor by EPA. Id. While the court in *American Corn Growers Ass'n.* v. *EPA* found that we had impermissibly constrained State authority, it did so because it found that we forced States to require BART controls without first assessing a source's particular contribution to visibility impairment. This is not the case with our action in Arkansas. In response to this court decision and to address these concerns we finalized revised Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations.[251]

Our analysis does not give greater weight to one factor over another; rather, we considered all five BART factors fully, revealing that the cost and visibility factors were the two most important factors in our decisions. In *American Corn Growers Ass'n.* v. *EPA,* the D.C. Circuit Court faulted how EPA assessed the statutory fifth factor of visibility improvement in a BART determination by using a regional, multi-source, group approach to assessing the visibility improvement factor, while assessing the other four statutory BART factors on a source-specific basis. Here, we did not give greater weight to our consideration of visibility improvement or consider the visibility in a different fashion from the other factors. All BART factors were evaluated on a source-specific basis.

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[242] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," June 1, 2007.

[243] As we explain in our proposed action (80 FR at 18993): "While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable under the reasonable progress requirements, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, it is appropriate to consider the projected visibility benefit of the controls when determining if the controls are needed to make reasonable progress". See also 79 FR at 74838, 74840, and 74874.

[244] 76 FR 81728, 81739.

[245] *Am. Corn Growers Ass'n* v. *EPA,* 291 F.3d 1, 7 (D.C. Cir. 2002).

[246] Id.

[247] Id. at 7–8.

[248] 40 CFR 51.308(e)(1)(ii)(B).

[249] Id.

[250] 291 F.3d at 6.

[251] 70 FR 39104.

The Court also noted that it is the State's and not EPA's duty to determine what BART is (provided that the State's determination complies with the Act and EPA guidelines.[252]). When EPA promulgates a FIP, it is acting in the place of the State, and thus has the same authority a state has when the state promulgates a SIP. It is therefore our duty to determine what BART is since we are proposing a FIP for Arkansas. We must also consider the same factors that the State is mandated to consider by the CAA. The "degree of improvement in visibility which may reasonably be anticipated to result from the use of such [best available retrofit] technology" is just one of several factors the State, or EPA in the case of a FIP, must consider in determining what BART is for a specific source.

We also disagree with commenter's statement that we required emissions reductions just for the sake of doing so under the guise of imperceptible visibility improvements or solely for the sake of reducing emissions. As discussed above, we considered all the statutory factors, including the "degree of improvement in visibility which may reasonably be anticipated to result from the use of such [best available retrofit] technology" in our BART determinations. We do not consider perceptibility as a threshold criterion for considering improvements in visibility to be meaningful. Failing to consider less-than-perceptible contributions to visibility impairment would ignore the CAA's intent to have BART requirements apply to sources that contribute to, as well as cause, such impairment.

Comment: One commenter stated that the visibility benefits of some of the required controls either individually or in combination will result in perceptible visibility benefits. They also comment that the regional haze regulations reflect EPA's finding that the Congressional goal of eliminating haze can be achieved only by tackling the multitude of sources that contribute to haze in national parks and wilderness areas. For this reason, EPA has stated that "visibility improvement does not need to be perceptible to be deemed significant for BART purposes."[253]

Response: We agree with the commenter. As we discuss in response to comments above, the Regional Haze Rule does not require that controls on a source or group of sources result in perceptible visibility improvement. We also agree that in some cases required controls either individually or in combination with other required controls will result in perceptible visibility improvements at impacted Class I areas on some days.

3. Model Selection

Comment: CALPUFF modeling cannot be used to justify controls at Independence under the reasonable progress requirements. Using CALPUFF, a single source model, for evaluating the reasonable progress benefits of installing controls at Independence is misplaced and clearly in error. EPA must demonstrate that additional controls are rational and economically justifiable and that the amount of progress that would result will be "reasonable based upon the statutory factors." CALPUFF is overly simplistic and greatly overstates the effect of single source emissions.[254] CALPUFF also fails to show the effects of multiple sources, and is much less sophisticated in its treatment of the chemical interactions of the different pollutants in the atmosphere than CAMx. The commenters also state that the use of CALPUFF does not reflect the interaction of pollutants in the atmosphere as accurately as CAMx does.

EPA used CALPUFF and did not perform refined, multi-state modeling to determine the amount of visibility improvements that would be achieved through the installation of controls because it would be difficult, time-consuming, and expensive. Instead, the Agency took a "thumbnail" approach in an attempt to justify the proposed controls based on how long it would take to achieve background levels.

EPA recognized in their action on Texas regional haze that CAMx, a photochemical transport 3-dimensional grid model, is a more appropriate modeling tool for reasonable progress purposes.[255] BART analyses assess the impact of a single facility based on the maximum or 98th percentile impacts, regardless of whether the Class I area was actually experiencing high visibility impairment on any given day. Since CALPUFF does not conduct an analysis considering all the emissions from all potential sources, some of the days with the worst model-predicted concentrations could be days that are not significantly impaired. Reasonable progress modeling using a photochemical model, such as CAMx, allows EPA to evaluate impacts from a source (with all other sources included in the modeling) on a Class I area's best and worst days.[256]

The draft *EPA Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$,* and Regional Haze (Dec. 2014) ("Draft Modeling Guidance") discusses the use of photochemical grid models. The Draft Modeling Guidance specifically notes that "a modeling based demonstration of the impacts of an emissions control scenario . . . as part of a regional haze assessment usually necessitates the application of a chemical transport grid model."[257] Throughout the Draft Modeling Guidance, the discussion is focused on items specific to photochemical grid models such as CAMx, including emissions inventories, supporting models, pre-processors, and applying a model to changes in visibility.

Notably, EPA recently issued a proposal, which would remove CALPUFF from EPA's preferred list of air dispersion models in its *Guideline on Air Quality Models*[258] ("Guideline"). Although EPA states that the proposed changes to the Guideline would not affect its recommendation that CALPUFF be used in the BART determination process, EPA made no such assurances regarding the use of CALPUFF for a reasonable progress analysis. EPA's proposal emphasizes the use of chemical transport models for assessing visibility impacts from a single source or small group of sources.

EPA's *Interagency Workgroup on Air Quality Modeling Phase 3 Summary Report: Long Range Transport and Air Quality Related Values*[259] makes clear that CALPUFF should not be used for a reasonable progress analysis.

Another commenter, EarthJustice, states that the other commenter's assessment of the methodology used for Texas sources is incorrect. In fact, EPA also used an emission "scaling" approach to determine the effects of various control scenarios for their evaluation of Texas sources that is similar to that currently being applied for the evaluation of the sources in Arkansas. EPA Region 6 did not run the CAMx model repeatedly to determine the overall visibility effects of controlling individual sources.

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[252] 291 F. 3d at 8–9.

[253] 79 FR 5032, 5120 (January 30, 2014).

[254] BART Guidelines, 70 FR 39104, 39121 ("there are other features of our recommended modeling approach that are likely to overstate the actual visibility effects of an individual source. Most important, the simplified chemistry in the model tends to magnify the actual visibility effects of that source.")

[255] Proposed Texas Regional Haze FIP, 79 FR 74818, 74877, 74878.

[256] *Id.* at 74878.

[257] Draft Modeling Guidance at 22. The Draft Modeling Guidance is available at *http://www.epa.gov/scram001/guidance/guide/Draft_O3-PMRH_Modeling_Guidance-2014.pdf.*

[258] Appendix W to 40 CFR part 51.

[259] Docket ID EPA–HQ–OAR–2015–0310–0004.

Response: The commenters confuse the single source analysis for evaluating the visibility impact and benefits of controls on units at the Independence facility and the analysis to estimate the visibility benefits of all controls on the 20% worst days in establishing a new reasonable progress goal for 2018. We utilized CALPUFF modeling following the same modeling protocol relied on for the BART analyses to assess the visibility impacts and potential benefits of controls for the units at the Independence facility. For estimating the total visibility benefit from all controls and estimating a new reasonable progress goal that reflects those controls, we relied on the CENRAP's 2018 CAMx modeling results, including source apportionment results, and the projected emission inventories, and scaled the results as described in the TSD. While we acknowledge that this approach is not as refined an estimate as would be attained in performing a new photochemical modeling run, it is based on scaling of earlier photochemical modeling results and not on CALPUFF modeling, as the commenter suggests. We disagree with the commenter's characterization of our analysis as a "thumbnail" approach and noted in our proposal that similar approaches have been used in other actions in Hawaii and Arizona. As discussed in the proposed action, our determination that controls were reasonable for the Independence units was based on our evaluation of the four factors and including consideration of the visibility benefit of controls. For consideration of the visibility benefits, we relied on the results of our CALPUFF modeling, the CENRAP CAMx source apportionment results, and point source emission inventory data that initially identified the Independence facility as having the greatest potential to impact visibility at nearby Class I areas among all sources not already controlled under the BART requirements.

The 2005 BART Guidelines recommended the use of CALPUFF for assessing visibility (secondary chemical impacts) but noted that CALPUFF's chemistry was fairly simple. The visibility results from CALPUFF could be used as one of the five factors in a BART evaluation and the impacts should be utilized in a somewhat relative sense because CALPUFF was not explicitly approved for full chemistry calculations.[260] The BART guidelines also provided the option to potentially use photochemical grid models (such as CAMx) in the future if modeling tools available were appropriate and EPA approved of the technical approaches and how the model would be utilized.[261] Appendix W gives us discretionary authority in the selection of what models to use for visibility assessments with modeling systems, and models such as CALPUFF, CMAQ, REMSAD, and CAMx have all been used for that purpose. Specifically for single-source reasonable progress assessments similar to that done here for Independence, CALPUFF has been used for the majority of sources, while CAMx has been used in some situations, most notably and as noted by the commenter, in evaluating specific Texas sources for reasonable progress. In 2006/7, EPA OAQPS and EPA Region 6 consulted with FLM representatives and approved Texas' BART screening modeling protocol using source apportionment tools in CAMx.[262]

Under the BART guidelines, CALPUFF should be used as a screening tool and appropriate consultation with the reviewing authority is required to use CALPUFF in a BART determination as part of a SIP or FIP. The BART Guideline cited and referred to EPA's Guideline on Air Quality Models (Appendix W)[263] which includes provisions to obtain approval through consultation with the reviewing authority. Moreover, we also note that in EPA's document entitled Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze (EPA–454/B–07–002), that Appendix W does not identify a particular modeling system as 'preferred' for modeling conducted in support of state implementation plans under 40 CFR 51.308(b). A model should meet several general criteria for it to be a candidate for consideration. These general criteria are consistent with the requirements of 40 CFR 51.112 and 40 CFR 51, Appendix W. Therefore, it is correct to interpret that no model system is considered 'preferred' under 40 CFR 51, Appendix W, Section 3.1.1 (b) for either secondary particulate matter or for visibility assessments. Under this general framework, we followed the general recommendation in Appendix Y to use CALPUFF as a screening technique since the modeling system has not been specifically approved for chemistry. The use of CALPUFF is subject to Appendix W requirements in section 3.0(b), 4, and 6.2.1(e) which includes an approved protocol to use the current version.

We and some states have used CALPUFF to model visibility benefits as part of the reasonable progress analysis, and have used largely the same methodology as in BART modeling (*i.e.* use of 24 hour or hourly maximum emissions, a "clean" background condition, and a maximum or 98th percentile metric).[264] This approach provides information on the relative visibility benefits of controls to inform the evaluation of cost-effectiveness as part of the four factor analysis and has the benefit that it is immediately comparable to modeling used for BART determinations. Compared to a CAMx modeling exercise, CALPUFF modeling of one or more sources requires much less resources and time. However, the CALPUFF approach models the impacts from the single facility with limited chemistry and focuses on the maximum impacts from the source rather than the visibility impairment on the 20% worst days. We agree with the commenter that the CAMx model may be better suited for evaluating the average visibility impairment due to individual sources during the 20% worst days as part of reasonable progress analysis. Photochemical models, like the CAMx model, provide a complete representation of emissions, chemistry, transport, and deposition, while CALPUFF treats a single source with simplified chemistry and parameterized physical processes. Furthermore, the

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[260] 70 FR 39104, 39123, 39124. "We understand the concerns of commenters that the chemistry modules of the CALPUFF model are less advanced than some of the more recent atmospheric chemistry simulations. To date, no other modeling applications with updated chemistry have been approved by EPA to estimate single source pollutant concentrations from long range transport." and in discussion of using other models with more advanced chemistry it continues, "A discussion of the use of alternative models is given in the Guideline on Air Quality in appendix W, section 3.2."

[261] 70 FR at 39123, 39124. "The use of other models and techniques to estimate if a source causes or contributes to visibility impairment may be considered by the State, and the BART guidelines preserve a State's ability to use other models. Regional scale photochemical grid models may have merit, but such models have been designed to assess cumulative impacts, not impacts from individual sources. Such models are very resource intensive and time consuming relative to CALPUFF, but States may consider their use for SIP development in the future as they are adapted and demonstrated to be appropriate for single source applications."

[262] See Appendix 9–4: CAMx Modeling Protocol, Screening Analysis of Potentially BART-Eligible Sources in Texas of the Texas regional haze SIP.

[263] 40 CFR part 51 Appendix W, Guideline on Air Quality Models, 70 FR 68218 (November 9, 2005).

[264] For example see summary of the reasonable progress analyses for specific sources in Arizona (79 FR 9353), North Dakota (76 FR 58631), Montana (77 FR 24065), and Wyoming (78 FR 34785).

CAMx model can be used to evaluate a large number of individual sources, and there are concerns in using CALPUFF for modeling impacts at distances much greater than 300 km from the source. In our analysis of source-specific impacts of Texas sources, we determined that CAMx was best suited for the complex analysis that we needed to perform in evaluating a large number of sources (38 separate facilities for our initial analysis) at distances from impacted Class I areas much larger than 300km, and in focusing on the 20% worst days. We discuss our selection of CAMx modeling in our Texas analysis in depth in the RTC document that accompanies that action.[265] As noted by EarthJustice, we did not perform a final CAMx model scenario to obtain the new RPGs in our Texas action, and instead relied on a scaling analysis similar to the methodology used in this action to adjust the CENRAP modeled RPG values based on the source apportionment data and emissions data available. As discussed above, RPGs were adjusted in actions in Arizona, Hawaii, Texas/Oklahoma and in this action by estimating the visibility improvement due to required controls based on scaling the anticipated emission reductions and the source apportionment modeling. In Texas/Oklahoma, source-specific source apportionment data and emissions were utilized. In the other states, emissions and source-apportionment data on a state and source category level were utilized.

Consistent with the examples discussed above,[266] in evaluating the sources in Arkansas, we determined that CALPUFF was adequate since we determined that only one source needed to be assessed for a reasonable progress evaluation, and that source was well within the recommended range for CALPUFF modeling of under 300km from the Class I areas of interest. In fact, three of the four impacted Class I areas lie within 200km of the source. We discuss comments concerning why our reasonable progress screening analysis focused on NO_X and SO_2 emissions from Arkansas point sources and our determination that additional analysis was necessary for the Independence facility in response to comments elsewhere in this document. In evaluating visibility impacts and benefits for those sources subject to BART, we relied on CALPUFF modeling prepared by the facilities. Utilizing CALPUFF for the reasonable progress analysis on Independence provided for a consistent approach for all facilities and allowed for direct comparison of the visibility impacts and benefits across all facilities impacted by the proposed rulemaking. In some situations, the CALPUFF modeled maximum or 98th percentile impacts of the facility may not coincide with the days that make up the worst 20% monitored days at the Class I area. Therefore, the visibility benefits modeled by CALPUFF are not directly comparable to the visibility benefits that would be anticipated on the 20% worst days from those specific controls. However, our analysis of the CENRAP 2018 CAMx photochemical modeling showed that: On the 20% worst days, Arkansas point sources contribute significantly to visibility impairment at Arkansas' Class I areas (greater than 4% of total visibility impairment at each Arkansas Class I area); review of the emission inventory revealed that a very small number of point sources are responsible for the majority of the point source emissions of NO_X and SO_2 and therefore a very small number of point sources are responsible for the portion of visibility impairment due to Arkansas point sources on the 20% worst days; and the Independence facility is one of the very largest emission sources and it is located relatively close (under 200 km) to three Class I areas. Therefore, we identified Independence as having the greatest potential to impact visibility on the 20% worst days based on emissions and location and should be evaluated for reasonable progress controls. We determined that CALPUFF modeling was appropriate and sufficient to provide information on the degree of visibility benefits of controls on Independence to inform the reasonable progress assessment. Through our evaluation of the four statutory factors, we identified cost-effective controls. We then considered visibility benefits of the cost-effective controls. We conducted CALPUFF modeling to determine the level of visibility impacts and benefits anticipated by SO_2 and NO_X controls at nearby impacted Class I areas, evaluating the 98th percentile visibility impacts.[267]

As we discuss elsewhere in this final rule, Entergy submitted CAMx model results as part of their comments. The modeled contribution to visibility impairment due to baseline emissions from the Independence facility alone were approximately 1.3% of the total visibility impairment at each Arkansas Class I area. In terms of deciviews, the average impact over the 20% worst days based on Entergy's CAMx modeling (adjusting to natural background conditions) is over 0.5 dv at the Arkansas Class I areas and even larger at the Class I areas in Missouri. These results estimate the visibility impacts from the source on the 20% worst days and confirm and provide additional support to our determination that Independence significantly impacts visibility, both in terms of maximum visibility impairment and visibility impairment on the 20% worst days, and that emissions controls provide for meaningful visibility benefits towards the goal of natural visibility conditions. In conclusion, both approaches, CALPUFF and CAMx, support the determination that the required controls are reasonable.

The commenter cites the BART guidelines and asserts that EPA recognizes that the CALPUFF model is overly simplistic and overstates the effect of single-source emissions. This is not an accurate characterization. EPA recognized the uncertainty in the CALPUFF modeling results when EPA made the decision, in the final BART Guidelines, to recommend that the model be used to estimate the 98th percentile visibility impairment rather than the highest daily impact value. We made the decision to consider the less conservative 98th percentile primarily because the chemistry modules in the CALPUFF model are simplified and likely to provide conservative (higher) results for peak impacts. Since CALPUFF's simplified chemistry could lead to model over predictions and thus be conservative, EPA decided to use the less conservative 98th percentile.[268] While recognizing the limitations of the CALPUFF model in the preamble, EPA concluded that, for the specific purposes of the Regional Haze Rule's BART provisions, CALPUFF is sufficiently reliable to inform the decision making process.[269] More recent evaluations demonstrate that the CALPUFF model can both under-predict and over-predict visibility impacts. For example, the 2012 ENVIRON report on

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[265] Texas Regional Haze FIP, EPA Response to Comments Document, available at *www.regulations.gov*, Document ID: EPA–R06–OAR–2014–0754–0087.

[266] For example see summary of the reasonable progress analyses for specific sources in Arizona (79 FR 9321, 9353), North Dakota (76 FR 58570, 58631 (September 21, 2011)), Montana (77 FR 23988, 24065 (April 20, 2012)), and Wyoming (78 FR 34738, 34785 (June 10, 2013)).

[267] See Summary of Additional Modeling for Entergy Independence and Appendix C to the TSD.

[268] "Most important, the simplified chemistry in the model tends to magnify the actual visibility effects of that source. Because of these features and the uncertainties associated with the model, we believe it is appropriate to use the 98th percentile—a more robust approach that does not give undue weight to the extreme tail of the distribution."

[269] 70 FR at 39123.

Comparison of Single-Source Air Quality Assessment Techniques for Ozone, $PM_{2.5}$, other criteria pollutants and AQRVs found that CALPUFF predicted highest 24-hr nitrate and sulfate concentrations lower than those predicted by the CAMx photochemical grid model in some areas within the modeling domain.[270] In a presentation for the 2010 annual Community Modeling and Analysis System conference, Anderson et al. (2010) [271] found that the CALPUFF model frequently predicted lower nitrate concentrations compared to the CAMx photochemical grid model which has a much more rigorous treatment of photochemical reactions. As we stated in promulgating the BART Guidelines, we are confident that CALPUFF distinguishes, comparatively, the relative contributions from sources such that the differences in source configurations, sizes, emission rates, and visibility impacts are well-reflected in the model results.[272]

With regard to comments concerning the draft *EPA modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze* (Dec. 2014), the commenter confuses the single-source analysis to evaluate visibility impacts and benefits of controls on an individual source with the analysis of overall visibility conditions at a Class I area due to the complete emission control strategy for all sources developed under the reasonable progress and long-term strategy requirements. The draft modeling guidance (as does the current guidance [273]) discusses the projection of overall visibility conditions and the need for photochemical grid modeling to account for all emission sources to model current visibility conditions and project future visibility conditions in response to the overall emission control scenarios. The section of the modeling guidance on regional haze [274] describes the recommended modeling analysis to assess overall future visibility improvement relative to the uniform rate of progress or ''glidepath'' (for each Class I area) as part of a reasonable progress analysis, and does not discuss source-specific analyses that may be completed to inform a reasonable progress assessment.[275] Because the CALPUFF model only evaluates visibility impacts from a single-source or a limited group of sources, it is not capable of projecting overall visibility conditions due to all sources and controls. Consistent with this draft guidance and the current guidance, CENRAP and Arkansas utilized CAMx and CMAQ modeling to project future visibility conditions for 2018 for establishment of the RPGs and comparison with the URP. Similarly, we utilized the CENRAP CAMx model results and adjusted them based on source apportionment and emissions data, to estimate the new RPGs for the Arkansas Class I areas considering the anticipated changes in emissions due to all required controls. We discuss the selection of models for assessing individual visibility impacts and benefits of controls above.

The commenters cite to the proposed revisions to the Guideline on Air Quality Models (Appendix W) [276] and the IWAQM Phase 3 modeling report [277] and assert that they support the conclusion that the use of CALPUFF for Independence was inappropriate. We disagree with the commenter. As we discuss above, we agree with the commenter that the CAMx model, may be better suited for a reasonable progress analysis in certain situations. Proposed revisions to Appendix W discuss removing the requirement to use CALPUFF for long-range transport assessments and as a preferred model due to the need to provide flexibility in estimating single-source secondary pollutant impacts and concerns about management and maintenance of the CALPUFF modeling code.[278] These proposed changes do not affect EPA's recommendation that States use CALPUFF to determine the applicability and level of BART in regional haze implementation plans. The proposed changes also do not preclude the use of CALPUFF for any other non-BART analysis, such as long-range transport PSD increment assessment, but recognize that modern chemical transport models have evolved sufficiently and provide a credible platform for estimating potential visibility impacts from a single or small group of emission sources.[279] The proposed Appendix W rule simply proposes to remove CALPUFF as a preferred model. If the proposed changes are finalized, CALPUFF or any other model can still be used for non-BART analyses with the appropriate justification as an ''alternative model''.

The IWAQM Phase 3 modeling report [280] discusses in detail the difference between the CALPUFF analysis typically followed under BART and the use of photochemical grid models for assessing reasonable progress and overall visibility conditions. The report does not identify a preferred model for single-source analysis but rather identifies the difference between the modeling approaches and cautions that the model results are not directly comparable.[281] The report also states

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[270] Comparison of Single-Source Air Quality Assessment Techniques for Ozone, $PM_{2.5}$, other Criteria Pollutants and AQRVs, ENVIRON, September 2012.

[271] Anderson, B., K. Baker, R. Morris, C. Emery, A. Hawkins, E. Snyder ''Proof-of-Concept Evaluation of Use of Photochemical Grid Model Source Apportionment Techniques for Prevention of Significant Deterioration of Air Quality Analysis Requirements'' Presentation for Community Modeling and Analysis System (CMAS) 2010 Annual Conference, (October 11–15, 2010) can be found at *http://www.cmascenter.org/conference/2010/agenda.cfm*.

[272] 70 FR 39104, 39122.

[273] 2007 EPA modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze.

[274] Draft EPA modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze (December 2014) Section 4.8 ''What Is The Recommended Modeling Analysis for Regional Haze?''

[275] Draft *EPA modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze* (December 2014) at 173: ''The modeling can be used to determine the predicted improvement in visibility and whether the visibility levels are on, above, or below the glidepath. It cannot by itself determine the reasonable progress goals or determine whether the reasonable progress goal is met, and it does not satisfy the requirements for the statutory four factor analysis. See the Regional Haze Rule and related guidance documents for more information on the four factor analysis, including control strategy analysis for single sources.''

[276] 80 FR 45340 (July 29, 2015).

[277] *Interagency Workgroup on Air Quality Modeling Phase 3 Summary Report: Long Range Transport and Air Quality Related Values.*

[278] 80 CFR 45340, 45349: ''In order to provide the user community flexibility in estimating single-source secondary pollutant impacts and given the availability of more appropriate modeling techniques, such as photochemical transport models (which address limitations of models like CALPUFF [37]), the EPA is proposing that the Guideline no longer contain language that requires the use of CALPUFF or another Lagrangian puff model for long-range transport assessments. Additionally, the EPA is proposing to remove the CALPUFF modeling system as an EPA-preferred model for long-range transport due to concerns about the management and maintenance of the model code given the frequent change in ownership of the model code since promulgation in the previous version of the Guideline. [38] The EPA recognizes that long-range transport assessments may be necessary in certain limited situations for PSD increment. For these situations, the EPA is proposing a screening approach where CALPUFF along with other appropriate screening tools and methods may be used to support long-range transport PSD increment assessments''

[279] 80 FR at 45349.

[280] Interagency Workgroup on Air Quality Modeling Phase 3 Summary Report: Long Range Transport and Air Quality Related Values (July 2015).

[281] IWAQM Phase 3 Report (July 2015) at 9: ''In sum, the differences in the types of models, the inputs to the models, and how the models and model results are used means that the results from a BART determination or similar modeling using CALPUFF cannot be directly compared to estimated impacts of emissions controls from a single source on a reasonable progress goal. If recommended

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that puff-models, such as CALPUFF, are not suited for reasonable progress demonstrations assessing overall visibility conditions and improvement because they are only able to model a single or small group of sources. Accordingly, we utilized CAMx model results to project overall future visibility conditions and establish the new RPGs in our reasonable progress demonstration. We used CALPUFF visibility modeling along with our evaluation of the costs of controls to inform our decision on the reasonableness of controls at the Independence facility. We also used CALPUFF visibility modeling as only one factor to inform our decisions on BART for subject-to-BART facilities. We also note that both the proposed revisions and the IWAQM report were published after the proposed rule for Arkansas regional haze was published and well before the technical analysis and modeling were completed.

We address comments concerning the contribution to visibility impairment from Arkansas point sources and the benefit of controls on Independence on Arkansas Class I areas elsewhere. We find that the contribution to visibility impairment from Arkansas point sources to be significant and that controls on Independence will result in meaningful visibility improvements towards the goal of natural visibility conditions and addresses a significant portion of the visibility impairment due to Arkansas sources.

Comment: Use of CALPUFF modeling does not support EPA's determination to require controls at the three coal-fired power plants. EPA's reliance on CALPUFF modeling results to make regulatory decisions in this case is not justified due to CALPUFF's well-known overestimation of visibility impacts.[282] Under the circumstances here, it is highly likely that CALPUFF overestimated the visibility impacts of White Bluff, Flint Creek and Independence by at least five (5) times. One component of this overestimation is the failure to incorporate the puff splitting option within the CALPUFF model into the development of visibility results. CALPUFF's overestimation of visibility impacts by a factor of 2–10 times under similar circumstances has been previously identified[283] and is described with specific reference to EPA's Proposed FIP for Arkansas in a report by Dr. Richard T. McNider.[284] Dr. McNider's report explains that the CALPUFF protocols used in the Proposed FIP fail to account for several well-known meteorological phenomena and processes, and causes it to overestimate visibility impacts. The Hoffnagle report demonstrates that CALPUFF modeling has not been validated by real world observations and that the current regulatory version of CALPUFF used by EPA is outdated.[285] Consequently, CALPUFF is not "sufficiently accurate to make determinations of deciview differences of 1 deciview."[286]

It is inappropriate to utilize CALPUFF as a screening tool to qualify a source as subject to BART and subsequently use it to determine a facility's required implementation of a control technology at a significant financial cost. EPA in its final regional haze rules stated that "because of the scale of the predicted impacts from these sources, CALPUFF is an appropriate or a reasonable application to determine whether such a facility can reasonably be anticipated to cause or contribute to any impairment of visibility. In other words, to find that a source with a predicted maximum impact greater than 2 to 3 deciviews meets the contribution threshold adopted by the States does not require the degree of certainty in the results of the model that might be required for other regulatory purposes."[287]

EPA's visibility analysis in the Proposed FIP systematically overstates both the baseline visibility impacts of White Bluff, Flint Creek and Independence, and the visibility benefits that would result from installation of EPA's required controls.[288] EPA's Proposed FIP presumes greater accuracy and precision than is reasonable or that may be expected from CALPUFF under the circumstances here. EPA has failed to update its model or to address any of these deficiencies considering currently available state-of-the-art modeling science. EPA's consideration of visibility impacts is fundamentally flawed and should be withdrawn and corrected.

EPA's admission that CALPUFF is a reasonable tool to evaluate a facility's visibility impacts only if those impacts exceed 2 to 3 deciviews, combined with the inability of the model to make accurate determinations below the 1 deciview threshold of perceptibility, discredits the results of the visibility analyses in the Proposed FIP. For these reasons, EPA has not adequately explained how the baseline and subsequent controlled visibility analyses in the Proposed FIP justify the selected control technologies.

Response: In promulgating the 2005 BART guidelines, we responded to comments concerning the limitations and appropriateness of using CALPUFF. There we respond:

> CALPUFF is the best modeling application available for predicting a single source's contribution to visibility impairment. It is the only EPA-approved model for use in estimating single source pollutant concentrations resulting from the long range transport of primary pollutants. In addition, it can also be used for some purposes, such as the visibility assessments addressed in today's rule, to account for the chemical transformation of SO_2 and NO_X. As explained above, simulating the effect of precursor pollutant emissions on $PM_{2.5}$ concentrations requires air quality modeling that not only addresses transport and diffusion, but also chemical transformations. CALPUFF incorporates algorithms for predicting both. At a minimum, CALPUFF can be used to estimate the relative impacts of BART-eligible sources. *We are confident that CALPUFF distinguishes, comparatively, the relative contributions from sources such that the differences in source configurations, sizes, emission rates, and visibility impacts are well-reflected in the model results.*

The use of CALPUFF in the context of the Regional Haze rule provides results that can be used in a relative manner and are only one factor in the overall BART determination. We determined the visibility results from CALPUFF could be used as one of the five factors in a BART evaluation and the impacts should be utilized somewhat in a relative sense because CALPUFF was not explicitly approved for full chemistry calculations.[289]

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procedures change for either BART determination impact assessments or reasonable progress goal impact assessments the comparability between approaches would also change. Photochemical grid models could be applied to estimate single source impacts and post-processed in a manner consistent with requirements for a BART-like assessment but Lagrangian puff models are not ideal for reasonable progress demonstrations since they typically characterize one or a small group of sources"

[282] Coincidentally, the EPA Administrator on July 14, 2015, signed a proposed notice to remove CALPUFF as a model for long-range transport in EPA's Guideline on Air Quality Models in Docket No. EPA–HQ–OAR–2015–0310.

[283] See Exhibit 19 to Nucor's comments, Hoffnagle, G., "Accuracy of Visibility Protocol Modeling in BART Evaluations" (June 15, 2012); EPA Docket EPA–R08–OAR–2011–0851.

[284] See, McNider, R. "Inadequacy of CALPUFF and CALMET Protocols for Visibility Impact Analysis in the Arkansas RHR FIP," July 13, 2015, attached hereto as Exhibit 20 to Nucor's comments.

[285] Hoffnagle, Exhibit 19 at p. 4.

[286] Hoffnagle, Exhibit 19 at p. 23.

[287] 70 FR 39104, 39123.

[288] As well as the other sources that were modeled using CALPUFF.

[289] 70 FR at 39123, 39124. "We understand the concerns of commenters that the chemistry modules of the CALPUFF model are less advanced than some of the more recent atmospheric chemistry simulations. To date, no other modeling applications with updated chemistry have been approved by EPA to estimate single source pollutant concentrations from long range

EPA's modeling in this action was consistent with the BART Guidelines and Appendix W. In recommending the use of CALPUFF for assessing source specific visibility impacts, EPA recognized that the model had certain limitations but concluded that "[f]or purposes of the regional haze rule's BART provisions . . . CALPUFF is sufficiently reliable to inform the decision-making process." [290] To the extent that the comment takes issue with the provisions in the BART Guidelines for use of CALPUFF, the legal deadline for challenging the use of CALPUFF has passed.

The commenters also refer to the 2005 Rule where we discuss the use of CALPUFF as a screening tool to qualify a source as subject to BART [291] and claim that we state that CALPUFF is only a reasonable tool when impacts exceed 2 to 3 deciviews. This is incorrect. The commenters fail to note that later in that same section we also discuss the recommended use of CALPUFF to evaluate visibility benefits of controls. There we state:

> ". . . we *also* recommend that the States use CALPUFF as a screening application in estimating the degree of visibility improvement that may reasonably be expected from controlling a single source in order to inform the BART determination. As we noted in 2004, this estimate of visibility improvement does not by itself dictate the level of control a State would impose on a source; "the degree of improvement in visibility which may reasonably be anticipated to result from the use of [BART]" is only one of five criteria that the State must consider together in making a BART determination." [292]

With respect to our analysis of controls under reasonable progress, we rely on our Reasonable Progress Guidance.[293] Our Reasonable Progress Guidance notes the similarity between some of the reasonable progress 4 statutory factors and the BART 5 statutory factors contained in the Act and repeated in the Guidance, and suggests that the BART Guidelines be consulted regarding cost, energy and nonair quality environmental impacts, and remaining useful life. We are therefore relying on our BART Guidelines for assistance in interpreting those reasonable progress factors, as applicable.

Also, similar to a BART analysis, we are considering the projected visibility benefit in our reasonable progress analysis following the BART guidelines and the use of CALPUFF.[294] We rely on the BART Guidelines here and in other actions evaluating reasonable progress controls because they provide a reasonable and consistent approach regarding visibility modeling.

We also disagree with the commenters conclusions concerning CALPUFF model performance and assertions that model predictions are overestimated by a factor of 5. We note that our regulations do not allow for the calibration of model results to try to adjust for potential biases as suggested by the commenter.[295]

As discussed more fully in the RTC document, the CALPUFF model can both under-predict and over-predict visibility impacts. While recognizing the limitations of the CALPUFF model in the Preamble of the Regional Haze Rule EPA concluded that, for the specific purposes of the Regional Haze Rule's BART provisions, CALPUFF is sufficiently reliable to inform the decision making process.[296]

We disagree with the commenter's assertion that we were incorrect in not utilizing the puff-splitting option [297] and that this resulted in an overestimation of model results. Tests conducted by the EPA and the FLM's have shown that the CALPUFF puff-splitting algorithm does not behave in the manner posited in Dr. McNider's document.[298] As discussed in detail in the RTC document, multiple evaluations of puff-splitting show that visibility impacts (and thus concentrations) both increased and decreased across various Class I areas impacted by the source. These results are contrary to the claims of the commenter that CALPUFF overpredicts downwind concentrations at distances beyond 100 km and that the use of puff-splitting would result in lower concentrations. Furthermore, commenters have not provided any additional CALPUFF modeling to support their claims concerning model performance using the non-default puff splitting option.

The commenter refers to the Hoffnagle report (Ex. 19 of Nucor comments) to support claims that the CALPUFF model overpredicts concentrations, that the model is unreliable beyond 200km, and that the modeling is not sufficiently accurate to make determinations of deciview differences of 1 dv. We disagree with the conclusions of the Hoffnagle report and note significant flaws in that analysis. We also note that all the large EGU sources modeled in this action are less than 200 km for at least one Class I area. We specifically address Hoffnagle's analysis of modeled to measured results in response to comments elsewhere where we address comments concerning the "margin of error" of the model and case study comparisons of CALPUFF modeled values to measured values.

We disagree with the commenter that the model we utilized is outdated. We used the regulatory version of the CALPUFF model.[299] We disagree that the newer versions of CALPUFF should be used in this action to determine potential visibility impacts. The newer version(s) of CALPUFF have not received the level of review required for use in regulatory actions subject to EPA approval and consideration in a BART decision making process. Based on our review of the available evidence we do not consider these newer versions of CALPUFF to have been shown to be sufficiently documented, technically valid, and reliable for use in a BART decision making process.

The commenters also refer to the proposed revisions to the Guideline on Air Quality Models (Appendix W). Proposed revisions to Appendix W discuss removing the requirement to use CALPUFF for long-range transport assessments and as a preferred model due to the need to provide flexibility in estimating single-source secondary pollutant impacts and concerns about management and maintenance of the CALPUFF modeling code.[300] These

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transport." and in discussion of using other models with more advanced chemistry it continues, "A discussion of the use of alternative models is given in the Guideline on Air Quality in appendix W, section 3.2."

[290] 70 FR at 39123.

[291] 70 FR at 39123.

[292] 70 FR at 39123.

[293] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," June 1, 2007.

[294] As we explain in our proposed action (80 FR at 18993): "While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable under the reasonable progress requirements, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, it is appropriate to consider the projected visibility benefit of the controls when determining if the controls are needed to make reasonable progress". See 79 FR at 74838, 74840, and 74874.

[295] App. W, Section 7.2.9(a) ". . . Therefore, model calibration is unacceptable."

[296] 70 FR at 39123.

[297] CALPUFF contains an optional puff splitting algorithm that can further account for vertical wind shear effects across individual puffs when this is of specific concern. Dispersion and transport can act on separate puffs generated from the original puff. This option is not part of the regulatory default set-up.

[298] See CALPUFF_SJGS_SPLIT_summary.xls.

[299] On December 4, 2013, EPA approved an update to v5.8.4 that contains bug fixes to the previous version. See December 3, 2013 CALPUFF Update Memo for a discussion of model changes.

[300] 80 CFR at 45349: "In order to provide the user community flexibility in estimating single-source secondary pollutant impacts and given the availability of more appropriate modeling

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proposed changes do not affect EPA's recommendation that States use CALPUFF to determine the applicability and level of BART in regional haze implementation plans. The proposed changes also do not preclude the use of CALPUFF for any other non-BART analysis. The proposed changes to the Appendix W rule simply propose to remove CALPUFF as a preferred model for long-range transport assessments. If the proposed changes are finalized, CALPUFF or any other model can still be used with the appropriate justification as an "alternative model" for long-range transport assessments.

Finally, the CAMx modeling provided by Entergy Arkansas provides additional information that directly contradicts the commenter's assertion that CALPUFF greatly overestimates visibility impacts by at least a factor of 5. As we discuss elsewhere in this final rule, the CAMx visibility modeling estimates a maximum visibility impact (limited to only the days comprising the 20% worst days and based on annual emissions) of over 1.5 dv from the Independence facility at both Caney Creek and Upper Buffalo. For the White Bluff facility, the CAMx maximum visibility impact is approximately 3.5 dv at Caney Creek and 0.8 dv at Upper Buffalo. In some situations, the CALPUFF modeled maximum or 98th percentile impacts of the facility may not coincide with the days that make up the worst 20% monitored days at the Class I area, therefore the true maximum impact considering all days based on CAMx modeling could be even higher. This compares to a CALPUFF modeled visibility 98th percentile impact (based on maximum emissions) due to the Independence facility of 2.5 dv at Caney Creek and 2.3 at Upper Buffalo. For White Bluff, the CALPUFF modeled impact (98th percentile) is approximately 3.3 dv at Caney Creek and 2.3 dv at Upper Buffalo.

We address more general comments concerning the use of CALPUFF modeling and model uncertainty in separate response to comments.

4. Margin of Error in CALPUFF Modeling

Comment: Commenters stated that BART requires that states (or EPA in the case of a federal implementation plan) consider "the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology." [301] The Ninth Circuit, in *National Parks Conservation Association* v. *EPA,* Case No. 12–73710, 2015 WL 3559149 at 8 (9th Cir. June 9, 2015), held that the estimated visibility improvement was less than CALPUFF's margin of error, and thus, EPA had no basis to believe that BART controls in that case could "reasonably be anticipated" to improve visibility. The Clean Air Act does not require visibility improvements that cannot be reasonable anticipated. Visibility improvements that are less than the margin of error are not "reasonably anticipated" and found to be invalid by the Ninth Circuit in *National Parks Conservation Association.*[302] In the proposal, EPA dictates the imposition of control equipment for emissions reduction under BART in instances where CALPUFF predicted minor visibility improvements. EPA did so without first undertaking any site specific analytical analysis to determine if the visibility improvements were in fact within the CALPUFF margin of error.

The CAA does not require visibility improvements that cannot be reasonably anticipated. Conversely, visibility improvements that are less than the margin of error were expressly found to be invalid. Until such time as EPA can provide assurance that the CALPUFF model is a reliable indicator of visibility projections, many of the numerical projections contained in the Proposed FIP are themselves, unreliable. For this reason, the Proposed FIP is flawed and is overly expansive and should be withdrawn.

Response: We disagree with the commenter's characterization of the Ninth Circuit decision regarding the "margin of error" of the CALPUFF model. The Ninth Circuit decision cited did not rule on any specific issue related to CALPUFF or the "margin of error." Rather, the court ruled on a procedural error that EPA did not respond to the comment received regarding the CALPUFF margin of error in its rulemaking as required under the law.[303]

In response to the court's finding in *American Corn Growers Ass'n.* v. *EPA* [304] that we failed to provide an option for BART evaluations on an individual source-by-source basis, we had to identify the appropriate analytical tools to estimate single-source visibility impacts. The 2005 BART Guidelines recommended the use of CALPUFF for assessing visibility (secondary chemical impacts) but noted that CALPUFF's chemistry was fairly simple and the model has not been fully tested for secondary formation and thus is not fully approved for secondary-formed particulate. In the preamble of the final 2005 BART guidelines we identify CALPUFF as the best available tool for analyzing the visibility effects of individual sources, but we also recognized that it is a model that includes certain assumptions and uncertainties.[305] Evaluation of CALPUFF model performance for dispersion (no chemistry) to case studies using inert tracers has been performed.[306] It was concluded from these case studies the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300km.[307] [308]

In promulgating the 2005 BART guidelines, we responded to comments concerning the limitations and

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techniques, such as photochemical transport models (which address limitations of models like CALPUFF [37]), the EPA is proposing that the Guideline no longer contain language that requires the use of CALPUFF or another Lagrangian puff model for long-range transport assessments. Additionally, the EPA is proposing to remove the CALPUFF modeling system as an EPA-preferred model for long-range transport due to concerns about the management and maintenance of the model code given the frequent change in ownership of the model code since promulgation in the previous version of the Guideline. [38] The EPA recognizes that long-range transport assessments may be necessary in certain limited situations for PSD increment. For these situations, the EPA is proposing a screening approach where CALPUFF along with other appropriate screening tools and methods may be used to support long-range transport PSD increment assessments."

[301] CAA section 169A(g)(2).

[302] 80 FR at 18968.

[303] "Concurring, Judge Berzon wrote separately to emphasize her understanding that the lead opinion is not impugning the EPA's use of the CALPUFF model generally, but only requiring a sufficiently reasoned response to a particular comment regarding CALPUFF's usefulness in these specific circumstances." Nat'l Parks Conservation Ass'n vs. EPA.

[304] *Am. Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002).

[305] 70 FR at 39121.

[306] See "more recent series of comparisons has been completed for a new model, CALPUFF (Section A.3). Several of these field studies involved three-to-four hour releases of tracer gas sampled along arcs of receptors at distances greater than 50km downwind. In some cases, short-term concentration sampling was available, such that the transport of the tracer puff as it passed the arc could be monitored. Differences on the order of 10 to 20 degrees were found between the location of the simulated and observed center of mass of the tracer puff. Most of the simulated centerline concentration maxima along each arc were within a factor of two of those observed." 68 FR 18440, 18458 (April 15, 2003), 2003 Revisions to Appendix W, Guideline on Air Quality Models

[307] Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. Publication No. EPA–454/R–98–019. Office of Air Quality Planning & Standards, Research Triangle Park, NC. 1998.

[308] 68 FR 18440, 18458, 2003 Revisions to Appendix W, Guideline on Air Quality Models.

appropriateness of using CALPUFF. There we respond:

> CALPUFF is the best modeling application available for predicting a single source's contribution to visibility impairment. It is the only EPA-approved model for use in estimating single source pollutant concentrations resulting from the long range transport of primary pollutants. In addition, it can also be used for some purposes, such as the visibility assessments addressed in today's rule, to account for the chemical transformation of SO_2 and NO_X. As explained above, simulating the effect of precursor pollutant emissions on $PM_{2.5}$ concentrations requires air quality modeling that not only addresses transport and diffusion, but also chemical transformations. CALPUFF incorporates algorithms for predicting both. At a minimum, CALPUFF can be used to estimate the relative impacts of BART-eligible sources. *We are confident that CALPUFF distinguishes, comparatively, the relative contributions from sources such that the differences in source configurations, sizes, emission rates, and visibility impacts are well-reflected in the model results.*

In the 2003 revisions to the Guideline on Air Quality Models, CALPUFF was added as an approved model for long-range transport of primary pollutants. At that time, we considered approving CALPUFF for assessing the impact from secondary pollutants but determined that it was not appropriate in the context of a PSD review because the impact results could be used as the sole determinant in denying a permit.[309] However, the use of CALPUFF in the context of the Regional Haze rule provides results that can be used in a relative manner and are only one factor in the overall BART determination. We determined the visibility results from CALPUFF could be used as one of the five factors in a BART evaluation and the impacts should be utilized somewhat in a relative sense because CALPUFF was not explicitly approved for full chemistry calculations.[310]

We also recognized the uncertainty in the CALPUFF modeling results when we made the decision, in the final BART Guidelines, to recommend that the model be used to estimate the 98th percentile visibility impairment rather than the highest daily impact value. We made the decision to consider the less conservative 98th percentile primarily because the chemistry modules in the CALPUFF model are simplified and likely to provide conservative (higher) results for peak impacts. Since CALPUFF's simplified chemistry could lead to model over predictions and thus be conservative, EPA decided to use the less conservative 98th percentile.[311] Examining the distribution of CALPUFF modeled visibility impacts, it can be seen that the few values at the extreme of the distribution are much higher than the rest of the values.[312] Therefore, in recognizing some of the limitations of the CALPUFF model, we determined that use of the maximum modeled impact may be overly conservative and recommended the use of the 98th percentile value.

We disagree with the commenter's general statement that there is an acknowledged over-prediction of the CALPUFF model or an acknowledged inaccuracy at low levels, and that the actual visibility impacts from the BART sources are lower. The CALPUFF model can both under-predict and over-predict visibility impacts when compared to photochemical grid model. For example, the 2012 ENVIRON report on *Comparison of Single-Source Air Quality Assessment Techniques for Ozone, $PM_{2.5}$, other criteria pollutants and AQRVs* found that CALPUFF predicted highest 24-hr nitrate and sulfate concentrations lower than those predicted by the CAMx photochemical grid model in some areas within the modeling domain.[313] In a presentation for the 2010 annual Community Modeling and Analysis System conference, Anderson et al. (2010)[314] found that the CALPUFF model frequently predicted lower nitrate concentrations compared to the CAMx photochemical grid model, which has a much more rigorous treatment of photochemical reactions. As discussed above, model evaluations examining how the model captures the transport and diffusion of pollutants showed that the model performed in a reasonable manner for modelled distances less than 300 km.[315] The selection of the 98th percentile value rather than the maximum value was made to address concerns that the maximum may be overly conservative.

The CALPUFF modeling following the BART guidelines and using the 98th percentile value does not lend itself to model performance evaluations of the type suggested by the commenters (see comments below concerning the "Margin of error" analysis), comparing measured visibility impairment at a specific time and place to modeled impairment at that same time and place to derive some "margin of error" in the modeled estimates. The BART modeling is a worst case assessment, utilizing maximum emissions,[316] assumptions of background ammonia and ozone, and simplified chemistry, modeled over a period of three years.[317] The modeling also does not capture the effect of competition with other emission sources for the available ammonia. The goal of this modeling is to estimate the maximum anticipated impact from the source in the vicinity of a Class I area (typically an area on the order of several hundred square miles or more), and not to provide an estimate of downwind concentrations or visibility conditions for a specific place at a specific time.

CALPUFF uses a pseudo-first-order chemical reaction mechanism to model the conversion of SO_2 to SO_4 and NO_X ($NO + NO_2$) to NO_3. We find the representation of key chemical conversions of precursors to $PM_{2.5}$ in CALPUFF are appropriate for estimating a worst-case scenario for this particular source and region. We note that small changes in emission levels will not significantly perturb the available ammonia. Therefore, the relative difference between two scenarios with similar emissions will not be overly influenced by assumptions of background concentrations of ammonia.

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[309] 68 FR 18440.

[310] 70 FR at 39123, 39124. "We understand the concerns of commenters that the chemistry modules of the CALPUFF model are less advanced than some of the more recent atmospheric chemistry simulations. To date, no other modeling applications with updated chemistry have been approved by EPA to estimate single source pollutant concentrations from long range transport," and in discussion of using other models with more advanced chemistry it continues, "A discussion of the use of alternative models is given in the Guideline on Air Quality in appendix W, section 3.2."

[311] "Most important, the simplified chemistry in the model tends to magnify the actual visibility effects of that source. Because of these features and the uncertainties associated with the model, we believe it is appropriate to use the 98th percentile—a more robust approach that does not give undue weight to the extreme tail of the distribution." 70 FR 39104, 39121.

[312] See figures for Lake Catherine and Domtar in our response to comments on the "Margin of Error" analysis in the RTC document

[313] Comparison of Single-Source Air Quality Assessment Techniques for Ozone, $PM_{2.5}$, other Criteria Pollutants and AQRVs, ENVIRON, September 2012.

[314] Anderson, B., K. Baker, R. Morris, C. Emery, A. Hawkins, E. Snyder "Proof-of-Concept Evaluation of Use of Photochemical Grid Model Source Apportionment Techniques for Prevention of Significant Deterioration of Air Quality Analysis Requirements" Presentation for Community Modeling and Analysis System (CMAS) 2010 Annual Conference, (October 11–15, 2010) can be found at *http://www.cmascenter.org/conference/2010/agenda.cfm.*

[315] 68 FR at 18458, 2003 Revisions to Appendix W, Guideline on Air Quality Models.

[316] 70 FR at 39129, "We believe the maximum 24hour modeled impact can be an appropriate measure in determining the degree of visibility improvement expected from BART reductions (or for BART applicability)"

[317] 70 FR 39104, 39107–3918 of BART Rule. For assessing the fifth factor, the degree of improvement in visibility from various BART control options, the States may run CALPUFF or another appropriate dispersion model to predict visibility impacts. Scenarios would be run for the pre-controlled and post-controlled emission rates for each of the BART control options under review. The maximum 24-hour emission rates would be modeled for a period of three or five years of meteorological data.

The utility of the model used must be judged based on the available data, the known limitations or simplifications inherent to the model, and the purpose of the modeling or manner in which the model results are used in informing decisions. The use of the 98th percentile value and considering a minimum of three years of meteorological data within CALPUFF provides a snapshot of the worst case visibility impacts, simulating impacts (based on maximum emissions and assumed ammonia concentrations) on a day when modeled meteorological conditions are most conducive to formation and transport of visibility impairing pollutants to a receptor within a Class I area. While there is some uncertainty in the absolute visibility impacts and benefits due to the model and some of the simplifications and assumptions used in the BART guideline modeling approach, the relative level of impact is a reliable assessment of the degree of visibility impacts and benefit from controls. Any uncertainties in meteorological conditions that govern the transport and diffusion of pollutants are less important in comparing impacts between two control scenarios, since the same effects will be included in both the base and the control scenario model simulations. CALPUFF modeling will be better at predicting changes in visibility impairment due to the application of controls than at predicting the absolute visibility impacts. BART determinations are only made for sources that have already been shown to reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Modeling of control scenarios is used to estimate the amount that this visibility impact can be reduced due to a reduction in emissions. The modeling of these control scenarios is done in a manner that holds all variables constant except for the emissions of the pollutant of interest. A relative reduction in visibility impact due to a change in emissions is an indication that visibility benefits are reasonably anticipated to occur. The modeled magnitude of the visibility improvement is not a determinative factor in the BART determination, but only one factor and is considered on a relative basis to the baseline impact and the benefits of other controls. The relative visibility benefit of all controls is weighed along with the absolute and relative costs of controls, energy and nonair environmental impacts, any existing controls, and the remaining useful life of the source. As stated above, we are confident that CALPUFF distinguishes, comparatively, the relative contributions from sources such that the differences in source configurations, sizes, emission rates, and visibility impacts are well-reflected in the model results.

CALPUFF visibility modeling, performed using the regulatory CALPUFF model version and following all applicable guidance and EPA/FLM recommendations, provides a consistent tool for comparison with the 0.5 dv subject-to-BART threshold. The CALPUFF model, as recommended in the BART guidelines, has been used for almost every single-source BART analysis in the country and has provided a consistent basis for assessing the degree of visibility benefit anticipated from controls as one of the factors under consideration in a five-factor BART analysis. Since almost all states have completed their BART analyses and have either approved SIPs or FIPs in place, there is a large set of available data on modeled visibility impacts and benefits, and how those model results were utilized to screen out sources and as part of the five-factor analysis in making BART control determinations for comparison with.

Comment: Trinity Consultants completed a quantitative analysis to evaluate the margin of error in the CALPUFF model for Lake Catherine Unit 4 and Domtar Ashdown Mill.[318] Trinity calculated the average difference between modeled values obtained using CALPUFF (including the CENRAP background) and IMPROVE monitored values for Caney Creek and Upper Buffalo. Trinity compared the regional haze design value format of average W20 days visibility for this analysis.

In its analysis, the pre-BART impact from Lake Catherine Unit 4 at Caney Creek and Upper Buffalo is inconsequential when compared with the IMPROVE measurements, which capture the impact of all other sources, including Lake Catherine, on the Class I areas.

The proposed NO_X BART controls for Lake Catherine Unit 4 will result in visibility improvements that are even more inconsequential and cannot accurately be predicted by CALPUFF. Based on Trinity's analysis, the minimum calculated margin of error for CALPUFF for Lake Catherine Unit 4 is 0.93 dv. The CALPUFF modeling predicted visibility improvement associated with EPA's proposed BART controls for Lake Catherine Unit 4 at Caney Creek and Upper Buffalo falls within the minimum calculated margin of error for CALPUFF for Lake Catherine Unit 4. Similarly, the predicted visibility improvements associated with the imposition of the proposed BART requirements for Power Boiler 2 at the Domtar Ashdown Mill fall within the CALPUFF model's margin of error. As such, the visibility improvements at each of these Class I areas associated with the proposed BART controls cannot "reasonably be anticipated."[319] Accordingly, EPA has not adequately demonstrated that it is appropriate to require controls on Lake Catherine Unit 4 or Power Boiler 2 at the Domtar Ashdown Mill.

These analyses include a discussion of work performed by TRC Environmental Corporation, including a June 2012 paper prepared by Gale Hoffnagle that discusses several case studies that compared CALPUFF modeled values to measured values from the IMPROVE monitoring network.[320] The commenters state that PPL Montana relied on this study in its successful challenge to the Montana FIP for its argument that EPA failed to explain why it could reasonably anticipate a visibility improvement when the improvement was within CALPUFF's margin of error.[321]

Response: The commenters mischaracterize the Ninth Circuit decision regarding the "margin of error" of the model. The commenter suggests that the Court agreed that the anticipated visibility benefits in that case were within the margin of error of the model. This is incorrect. The Ninth Circuit decision cited did not rule on any specific issue related to CALPUFF. Rather, the court ruled on a procedural error that EPA did not respond to the comment received regarding the CALPUFF margin of error in its rulemaking as required under the law.[322] Here and elsewhere in our response to comments we address a very similar comment with respect to

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[318] "Evaluation of the CALPUFF Modeling System Margin of Error Report for BART Analysis, Domtar A. W. LLC, Ashdown Mill" Prepared by Trinity Consultants, August 2015 and "Evaluation of the CALPUFF Modeling System Margin of Error Report for BART Analysis, Entergy Arkansas, Inc., Lake Catherine Plant" Prepared by Trinity Consultants, August 2015.

[319] CAA section 169A(g)(2); *see NPCA*, 788 F.3d 1134, 1146–47.

[320] Gale F. Hoffnagle, Accuracy of Visibility Protocol Modeling in BART Evaluations, TRC Environmental Corporation, June 15, 2012.

[321] *National Parks Conservation Ass'n* v. *EPA*, 788 F.3d 1134, 1146–47 (9th Cir. 2015).

[322] "Concurring, Judge Berzon wrote separately to emphasize her understanding that the lead opinion is not impugning the EPA's use of the CALPUFF model generally, but only requiring a sufficiently reasoned response to a particular comment regarding CALPUFF's usefulness in these specific circumstances." *Nat'l Parks Conservation Ass'n* vs. *EPA*.

CALPUFF modeling for Arkansas sources, as well as the commenter's analysis claiming to estimate the "margin of error".

The Trinity analysis [323] purports to calculate a "margin of error" of the CALPUFF modeling for Lake Catherine. In general, the commenter's analysis adds CALPUFF model results for a specific source or sources with CAMx model results and compares this value to visibility conditions derived from monitored data at each Class I area. This analysis is flawed for many reasons as discussed in detail in our RTC document and fails to provide any assessment of the ability of the CALPUFF model to evaluate the degree of visibility improvement that may be expected from available control technology to inform BART and reasonable progress evaluations. Whether or not the modeled visibility impacts or benefits lie below this calculated "margin of error" is immaterial to any assessment of whether or not the visibility impairment or benefits from controls can reasonably be anticipated to occur. BART determinations are only made for sources that have already been shown to reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Modeling of control scenarios is used to estimate the amount that this visibility impact can be reduced due to a reduction in emissions. The modeling of these control scenarios is done in a manner that holds all variables constant except for the emissions of the pollutant of interest. A relative reduction in visibility impact due to a change in emissions is an indication that visibility benefits are reasonably anticipated to occur. The modeled magnitude of the visibility improvement is not the determinative factor in the BART determination, but only one factor and is considered on a relative basis to the baseline impact and the benefits of other controls. The relative visibility benefit of all controls is weighed along with the absolute and relative costs of controls, energy and nonair environmental impacts, any existing controls, and the remaining useful life of the source. As discussed elsewhere in this section of the final rule, we are confident that CALPUFF distinguishes, comparatively, the relative contributions from sources such that the differences in source configurations, sizes, emission rates, and visibility impacts are well-reflected in the model results.

We respond to specific comments concerning each separate case study in our RTC document.

5. Reasonable Progress Analysis for Entergy Independence

Comment: Entergy contracted with Trinity to perform regional haze modeling using CAMx and PSAT based on the modeling originally developed for CENRAP. This modeling was performed to assess the proposed control options for Independence units 1 and 2, as well as White Bluff units 1 and 2. In addition to the baseline scenario modeling, the FIP scenario (proposed controls in EPA's FIP) and Entergy's proposed control approach consisting of installed LNB/SOFA on Independence, and the cessation of coal combustion at White Bluff were modeled.

Entergy stated that EPA's own analysis counsels against imposing emission limits on Independence. EPA asserts that CENRAP modeling shows that sulfate from *all* point sources included in the regional modeling is projected to contribute to 57% of the total light extinction at Caney Creek on the W20 days in 2018 and 43% of the total light extinction at Upper Buffalo.[324] However, EPA recognizes that the CENRAP modeling also demonstrates that sulfate from all (elevated and low level) *Arkansas* point sources is projected to be responsible for only 3.58% of the total light extinction at Caney Creek and 3.20% at Upper Buffalo.[325] The contribution of Arkansas point sources' nitrate emissions to visibility impairment at Arkansas' Class I areas is even more insignificant. According to EPA's analysis, nitrate from *all* point sources included in the regional modeling is projected to account for only 3% of the total light extinction at the Caney Creek and Upper Buffalo Class I areas, with nitrate from *Arkansas* point sources being responsible for only 0.29% of the total light extinction at Caney Creek and 0.25% at Upper Buffalo.[326] The Independence units' share of emissions to this minimal contribution from Arkansas point sources to visibility impairment at Caney Creek and Upper Buffalo is even less.

Entergy's CAMx modeling confirms that Independence's contribution to visibility impairment is insignificant in both Class I areas. Independence is projected to contribute to only 0.119 dv of visibility impairment at Caney Creek and Upper Buffalo on W20 days in 2018.[327] This reflects only one half of one percent of the visibility impairment, based on modeling, on the W20 days in either Caney Creek or Upper Buffalo. Yet, based on such a miniscule contribution and with no credible explanation, EPA arbitrarily concludes that SO_2 and NO_X controls at Independence are warranted.

Response: We disagree with the commenter's assertion that the contribution to visibility impairment from Entergy Independence is "insignificant" or "minimal." For example, as the commenter states, the CENRAP source apportionment data show that sulfate from Arkansas point sources are projected to be responsible for 3.58% of the total light extinction at Caney Creek and 3.20% at Upper Buffalo in 2018. As we discuss in our proposal, based on 2011 NEI data, the Entergy Independence Plant is the second largest source of both SO_2 and NO_X point source emissions in Arkansas, accounting for approximately 36% of the SO_2 point-source emissions and 21% of the point source NO_X emissions in the State.[328] Therefore, a significant portion of the total visibility impairment on the 20% worst days, on the order of 1% or more, can be expected to be attributable to SO_2 emissions from a single facility, the Independence facility. As we discuss in more detail elsewhere, given their contribution to visibility impairment on the 20% worst days, we consider both SO_2 and NO_X to be key pollutants contributing to visibility impairment at Arkansas' Class I areas. Our CALPUFF modeling evaluating the baseline 98th percentile impacts confirmed that the Independence facility was estimated to impact visibility at levels much larger than the level considered to "cause" visibility impairment (greater than 1 dv) at nearby Class I areas, ranging from 2.512 dv at Caney Creek, to 1.859 dv at Mingo. CALPUFF modeling also showed that anticipated visibility benefits from SO_2 and NO_X controls at the facility exceeded 1 dv at each of the four impacted Class I areas. Although we recognize that Independence is not a subject to BART source, for comparison purposes we note that the threshold used for visibility impacts to determine whether facilities are subject to BART is 0.5 dv.[329]

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[323] Evaluation of the CALPUFF Modeling System Margin of Error for a BART Analysis, Entergy Services, Inc.—Lake Catherine Plant, available as Exhibit H to comments submitted by Entergy Arkansas, Inc.

[324] 80 FR 18944, 18990.

[325] *Id.*

[326] *Id.*

[327] See Figures 9 and 10 of Entergy Arkansas Inc. Comments On the Proposed Regional Haze and Interstate Visibility Transport Federal Implementation Plan for Arkansas available in the docket for this action.

[328] 80 FR at 18991.

We disagree with the commenter that the CAMx modeling submitted by the commenter confirms that contributions to visibility impairment from the Independence facility are insignificant. When properly assessed, as detailed in the RTC document, the commenter's CAMx modeling supports and reinforces our finding that visibility impairment from Entergy Independence is significant and emission reductions will result in meaningful visibility benefits towards the goal of natural visibility conditions. Entergy's CAMx modeling shows a visibility impact of 0.12 dv at both Caney Creek and Upper Buffalo when compared to 2018 "dirty" or "degraded" background conditions. The commenter then calculates that this 0.12 dv impact is 0.5% of the total 23 dv visibility impairment. As discussed in the RTC document, the deciview scale is a logarithmic function of extinction, and therefore the calculations by the commenter are incorrect because they are based on deciview values and must be performed based on light extinction to properly calculate the percent contribution to visibility impairment. Spreadsheets submitted by the commenter present the light extinction attributable to each source (in inverse megameters) based on the results of their CAMx source apportionment modeling and calculate the percent contribution to total visibility impairment at each Class I area.[330] The commenter is incorrect in its statement that the impact from the Independence facility is one half of one percent; it is in fact, based on their own modeling and calculation, approximately 1.3% of the total visibility impairment at each Arkansas Class I area. Considering that the CAMx photochemical modeling takes into account the emissions of thousands of sources, both in Arkansas and outside of the state, we consider this to be a significant contribution to visibility impairment at each Class I area and a large portion (approximately one-third) of the total contribution from all Arkansas point sources that can be addressed through installation of controls on two units at a single facility. The CAMx modeling also showed that at Upper Buffalo, the Independence facility's contribution to visibility impairment is greater than the contribution from all of the subject-to-BART sources addressed in this final action combined.

Furthermore, the deciview visibility impacts for individual sources should be assessed based on natural "clean" background visibility conditions. The deciview improvement based on the 2018 background conditions provides an estimate of the amount of benefit that can be anticipated in 2018 and the impact a control/emission reduction may have on the established RPG for 2018. However, this estimate based on degraded or "dirty" background conditions underestimates the visibility improvement that would be realized for the control options under consideration. The source impacts and the potential benefits of controls must be considered relative to a light extinction level that represents a clean/natural background, rather than the current visibility conditions or projected visibility conditions at the end of the planning period.[331] The need for consideration of visibility impacts and benefits relative to clean/natural conditions was explained in the preamble to the final BART Guidelines:

> Using existing conditions as the baseline for single source visibility impact determinations would create the following paradox: The dirtier the existing air, the less likely it would be that any control is required. This is true because of the nonlinear nature of visibility impairment. In other words, as a Class I area becomes more polluted, any individual source's contribution to changes in impairment becomes geometrically less. Therefore the more polluted the Class I area would become, the less control would seem to be needed from an individual source. . . . Such a reading would render the visibility provisions meaningless, as EPA and the States would be prevented from assuring "reasonable progress" and fulfilling the statutorily-defined goals of the visibility program. Conversely, measuring improvement against clean conditions would ensure reasonable progress toward those clean conditions.[332]

The same logic applies to the evaluation of visibility impacts and benefits for sources examined for controls for reasonable progress. Accordingly, the EPA has used clean background conditions in evaluating the benefits of controls on individual reasonable progress sources and has disapproved reasonable progress decisions by states that relied on modeling employing dirty background conditions.[333] This approach has been upheld by the Eighth Circuit.[334]

We note that while CALPUFF results are not directly comparable to CAMx model results due to differences in metrics, models and model inputs,[335] CALPUFF visibility impacts are also calculated based on natural or "clean" background conditions.

We recalculated the average modeled visibility impact for the 20% worst days based on the commenter's CAMx modeled average visibility impact for the 20% worst days using a clean background approach (using annual average natural conditions background).[336] The Independence facility (units 1 and 2 combined) has impacts greater than 0.5 dv at both

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[329] "As a general matter, any threshold that you use for determining whether a source "contributes" to visibility impairment should not be higher than 0.5 deciviews." BART Guidelines, App. Y to 40 CFR 51.

[330] See "Entergy Scenario 01 Contribution 2015-1124_FINAL.xlsx," "Avg_Impacts" tab, column "AA" for Caney Creek and Upper Buffalo Class I areas. We summarize these results in the RTC document.

[331] This recommended approach to the treatment of background air quality when quantifying source impacts and potential benefits from additional measures is different than the approach to background air quality when projecting how all emission reductions measures combined will determine visibility conditions at the end of the implementation period, *i.e.,* how background assumptions relate to the RPGs. It is not appropriate to consider only the amount by which a potential measure or combination of measures would change the projected overall deciview index value as of the end of the implementation period, *i.e.,* the degree by which the RPGs would differ with and without the control being included in the LTS. The RPGs are values that will be compared in a progress report to actual visibility conditions, and accordingly must represent the expected actual overall visibility conditions. Estimates of source impacts and measure benefits have a different purpose, which is to help guide decisions on the control of individual sources.

[332] 70 FR at 39124.

[333] The EPA has followed this logic in the North Dakota (77 FR 20894, April 6, 2012), Montana (77 FR 57864, September 18, 2012), Arizona (79 FR 52420, September 3, 2014), and Texas (81 FR 296, January 5, 2016) FIPs and partial disapprovals of North Dakota (77 FR 20894, April 6, 2012) and Texas (81 FR 296, January 5, 2016).

[334] *North Dakota* v. *EPA,* 730 F.3d 750, 764–766 (8th Cir. 2013). "Although the State was free to employ its own visibility model and to consider visibility improvement in its reasonable progress determinations, it was not free to do so in a manner that was inconsistent with the CAA. Because the goal of § 169A is to attain natural visibility conditions in mandatory Class I Federal areas, see CAA section 169A(a)(1), and EPA has demonstrated that the visibility model used by the State would serve instead to maintain current degraded conditions, we cannot say that EPA acted in a manner that was arbitrary, capricious, or an abuse of discretion by disapproving the State's reasonable progress determination based upon its cumulative source visibility modeling."

[335] Some of the major differences are: (1) CALPUFF uses maximum 24-hour emission rates, while CAMx uses annual average emission rates; (2) CALPUFF focuses on the day with the 98th percentile highest visibility impact from the source being evaluated, whereas CAMx focuses on the average visibility impacts across the 20% worst days regardless of whether the impacts from a specific facility are large or small; and (3) CAMx models all sources of emissions in the modeling domain, which includes all of the continental U.S., whereas CALPUFF only models the impact of emissions from one facility without explicit chemical interaction with other sources' emissions.

[336] Deciview impacts are calculated using the following equation: $\Delta dv = 10 \ln((b_{background} + b_{source})/b_{background})$, where b is extinction (Mm^{-1}) and Δdv is the delta-deciview visibility impact.

Caney Creek and Upper Buffalo on average across the 20% worst days on a "clean" background basis based on CAMx modeling submitted by the commenter.[337] These CAMx model results for the average across the 20% worst days show that the Independence facility contributes significantly to visibility impairment on the 20% worst days and controls will result in meaningful visibility benefit towards the goal of natural visibility conditions. Furthermore, the maximum visibility impact on an individual day within the subset of days that make up the 20% worst days are much larger. Facility-wide visibility impacts from Independence exceed 1 dv at each Arkansas Class I area. We note that in some situations, the days that CALPUFF model maximum or 98th percentile value impacts of the facility occur may not coincide with any of the days that make up the days in the worst 20% days at the Class I area and the visibility impacts modeled by CALPUFF are not directly comparable to the visibility benefits that would be anticipated on the 20% worst days. See our complete RTC document for additional information on calculated visibility impacts from the Entergy facilities based on the commenter's CAMx modeling results.

Comment: The level of improvement expected from EPA's proposed controls for Independence is virtually insignificant and does not justify the costs of controls. The BART-type evaluation for NO_X for the Independence Power Plant Units 1 and 2 would result in visibility improvements ranging from 0.148 to 0.459 dv with a cumulative improvement of 0.978 dv. EPA recognized that these improvements were relatively small and proposed an option (Option 2) that did not include the LNB/SOFA NO_X controls for Units 1 and 2. EPA, however, did not recognize that the Independence facility is subject to CSAPR and that NO_X reductions "better than BART" would already be achieved by participation in that program without specifically requiring the LNB/SOFA in the FIP.

For SO_2 emissions for Independence Units 1 and 2, EPA estimated improvements with dry FGD ranging from 1.045 to 1.178 dv with a cumulative benefit of 4.375 dv. Three of the four class I areas would realize visibility improvements barely discernible to the human eye (<1.1 dv). The best improvement is for Upper Buffalo and is only 1.178 dv. It is not appropriate to use the cumulative values as a representation of the visibility benefit of adding controls since only the improvement at each particular Class I area could actually be recognized. This level of visibility improvement is virtually insignificant and does not justify the costs associated with adding a dry FGD and, therefore, does not meet the statutory RPG requirement for proper consideration of the cost of controls and so is not "reasonable."

Response: We disagree with the commenter and do not believe that visibility improvements from NO_X controls ranging from 0.128 to 0.459 dv are relatively small. Given that sources are subject to BART based on a contribution threshold of no greater than 0.5 deciviews, it would be inconsistent to consider an improvement in visibility of nearly 0.5 dv to be insignificant or small for reasonable progress. In our proposed action, we noted that "The single source CALPUFF modeling shows that sizeable reductions to the maximum 98th percentile visibility impact from the Independence facility may be achieved through NO_X controls."[338] Furthermore, total modeled extinction at Caney Creek is dominated by nitrate on 4 of the days that comprise the 20% worst days in 2002, and a significant portion of the total extinction at Upper Buffalo on 2 of the days that comprise the 20% worst days in 2002 is due to nitrate.[339] Both NO_X and SO_2 are key pollutants that contribute to visibility impairment at the Arkansas Class I areas. Because we have identified these two pollutants as key, we are obligated to determine which sources or source categories are responsible for emitting these pollutants and evaluate them for reasonable progress. Independence is the second largest point source of both SO_2 and NO_X in the State.[340] Therefore, we evaluated it for reasonable progress controls for both pollutants. We recognized, however, that at this time, even though NO_X emissions are a key pollutant, point source NO_X emissions are not the main contributors to visibility impairment on the average of the 20% worst days at Arkansas' Class I areas in 2018, as projected by CAMx source apportionment modeling."[341] Even though we recognized that NO_X emissions are a key pollutant to reaching the regional haze goals, and that the visibility benefits from NO_X controls were sizeable, we took comment on two options because the visibility impairment due to Arkansas point source emissions on the average of the 20% worst days were primarily due to sulfate emissions. We also found that significant reductions could be achieved very cost effectively through the implementation of low NO_X burners. In our final action, we have determined that it is appropriate to require the NO_X controls as proposed under Option 1 because the goal of the long-term strategy and reasonable progress requirements is to improve visibility and make progress towards natural conditions and NO_X is a key pollutant impacting visibility at the Arkansas Class I areas. We used a shorthand term, "driver," in our proposal discussing SO_2, and did not mean to imply that NO_X was not also a key pollutant. While point source NO_X emissions are not the primary contributor to impairment on most of the 20% worst days, NO_X is a key contributor to visibility on other days of the year and on some days that make up the 20% worst days (in 2002, IMPROVE monitor data shows that two days that make up the 20% worst days at Upper Buffalo and three days at Caney Creek are more significantly impacted by nitrate than sulfate). So in considering reasonable progress factors, we have determined that because NO_X and SO_2 are both key visibility impairing pollutants, for Independence there are technically feasible and cost effective controls available for both SO_2 and NO_X and those controls will provide significant visibility improvement. Therefore, both SO_2 and NO_X controls are reasonable and necessary to eventually achieve the national goal. We have determined that it is appropriate to reduce NO_X emissions and finalize Option 1. As to the comment that we did not recognize "better than BART" coverage due to CSAPR, we address this comment elsewhere in a separate response to comment.

With respect to the anticipated visibility improvement due to SO_2 controls, we consider visibility benefits ranging from 1.045 to 1.178 dv at each Class I area to be significant. We note that the Regional Haze Rule provides that sources with a 0.5 dv impact at a Class I area "contribute" to visibility impairment and must be analyzed for BART controls, and that source with a 1.0 dv impact at a Class I area to "cause" visibility impairment. Given that sources are subject to BART based on a contribution threshold of no greater than 0.5 deciviews and visibility impacts greater than 1.0 deciview are considered a level to be "causing" visibility impairment, it would be inconsistent to consider a potential improvement in visibility of greater than twice the BART threshold to be insignificant.

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[337] See "Entergy Arkansas CAMx—EPA calcs max and clean background.xlsx," available in the docket for this action.

[338] 80 FR at 18995.

[339] See Arkansas Regional Haze SIP, Appendix 8.1— "Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans," section 3.7.1 and 3.7.2. See the docket for this rulemaking for a copy of the Arkansas Regional Haze SIP.

[340] See 80 FR at 18991, Table 59.

[341] 80 FR at 18995.

Furthermore, as discussed elsewhere throughout this final rule, results of Entergy Arkansas' CAMx modeling with source apportionment provide additional support that the Independence facility has significant impacts on visibility at nearby Class I areas on the 20% worst days and that controlling these units would result in significant visibility benefits towards the goal of natural visibility conditions. We address comments concerning the consideration of cumulative visibility benefits and imperceptible visibility benefits elsewhere.

Comment: EPA's CALPUFF modeling indicates that the SO_2 and NO_X emission limits proposed for Independence will result in a 1.952 dv improvement in Caney Creek and a 1.782 dv improvement in Upper Buffalo. However, this range is vastly overstated. Based on the current monitored visibility levels in Caney Creek and Upper Buffalo, the W20 days show that the visibility impairment in 2018 will be approximately 23 to 24 dv. EPA recognizes that sulfate from all of Arkansas' point sources are projected to be responsible for only about 3.6% of total light extinction at Arkansas' Class I areas based on CENRAP modeling.[342] This means that sulfate from *all* Arkansas point sources are projected to be responsible for only about 0.81–0.86 dv of impairment (23–24 dv × 3.6%). For nitrates, EPA projects that Arkansas point source emissions will account for, at most, 0.29% of the total light extinction at Arkansas' Class I areas. Independence's SO_2 and NO_X emissions contribute only a portion to the sulfate and nitrate percentages estimated from Arkansas point sources. It would, therefore, be impossible for the SO_2 and NO_X limits proposed for Independence to result in deciview improvements at Caney Creek and Upper Buffalo of 1.952 dv and 1.782 dv, respectively. This simple example demonstrates the obvious flaw in EPA's use of CALPUFF for its reasonable progress analysis and, thus, its justification for imposing emission limits on Independence despite the fact that the Class I areas are below the URP.

Based on CALPUFF modeling, EPA's proposed BART limits will result in projected combined visibility benefits of approximately 4.3 dv at Caney Creek. Based on Entergy's statistical projection of the haze index in Caney Creek, that would result in a haze index of 15.76 dv, which would put Caney Creek closer to natural background levels than the glide path. The URP would not reach that haze level until approximately 2048.[343] Indeed, even if you ascribed the CALPUFF-projected benefits to Caney Creek based on the recent IMPROVE levels (approximately 22 dv between 2009 and 2012), the projected haze index would drop to 17.7 dv, which indicates no further action should be needed to remain below the URP until approximately 2038.

If EPA insists on relying on CALPUFF to evaluate the projected visibility benefits of requiring controls on Independence, it must be consistent and use CALPUFF to evaluate the need for such controls for purposes of demonstrating reasonable progress. As demonstrated in Figures 11 and 12, controls at Independence cannot be justified for reasonable progress based on the CALPUFF results, which predict an improvement of several deciviews solely from BART controls.

Response: As more fully explained above and in the RTC Document, the commenter's analysis fails to account for the fact that deciviews are a logarithmic function of extinction, that CALPUFF results are for the maximum impact (98th percentile impact from each source) in contrast to the CENRAP projected visibility conditions that are for the average visibility over the 20% worst days, and also fails to differentiate between deciview values calculated based on natural background conditions (as the CALPUFF results are) and the deciview values relative to a degraded or dirty background.

First, the commenter incorrectly estimates that the impact from sulfate point source emissions in Arkansas is 0.81–0.86 dv. Because the deciview metric is a logarithmic function of extinction, the percent extinction cannot be directly applied to the total deciview impairment. Recalculating the impact from sulfate point sources to correct for this error yields approximately a 0.32 dv impact based on a "dirty" background 2018 projected visibility conditions and 0.92 dv based on a natural background approach.

Second, 0.92 dv represents the estimated deciview improvement from eliminating sulfate emissions at all point sources in Arkansas (based on typical or average emissions) on average across the 20% worst days, as defined by the 20% worst days of monitored visibility at Caney Creek. This CAMx derived value is not directly comparable to the CALPUFF modeled 1.952 dv improvement from controls on both units at Independence, due to differences in models, model inputs and metrics. CALPUFF modeling following the BART guidelines and recommended protocol provides an estimate of the maximum (98th percentile) visibility benefit based on 24-hr maximum actual emissions modeled over a period of three years. The CAMx modeling results presented by the commenter represent the average visibility impacts over the 20% worst days (as defined by monitored data) based on modeling actual emissions levels. In addition, CALPUFF uses an estimated constant background ammonia level and does not account for the competition for ammonia due to emissions from other sources. A maximum value of 1.952 dv for visibility benefits of controlling Independence based on CALPUFF modeling is not inconsistent with an estimated 0.92 dv impact from all sulfate point source emissions averaged over the 20% worst days. In general, the maximum value could be several times larger than the average over the 20% worst days (representing the average visibility over the 73 days, or 24 monitored days with the worst visibility). Furthermore, the maximum value as modeled by CALPUFF is based on maximum 24-hr emissions, which may be much higher than the average emissions. As discussed in a separate response to comment above, CAMx modeling using source apportionment provided by the commenter (Entergy) modeled a facility-wide impact from Entergy Independence of 1.64 dv on the maximum day within the subset of days that make up the 20% worst days. The maximum modeled impact across the full 365 days modeled could be much larger. Furthermore, this modeling is based on actual emissions and not maximum 24-hr emissions as modeled by CALPUFF. Therefore, the 1.952 dv visibility benefit estimated by CALPUFF is not "impossible" and is in fact in line with the visibility impacts estimated using the CAMx model as supplied by the commenter.

Third, the commenter is incorrect in estimating a 4.3 dv improvement from all BART controls and using this value to adjust projected visibility conditions in 2018 on the 20% worst days in the above figures. The cumulative visibility impacts cited to by the commenter (*e.g.,* 4.3 dv improvement at Caney Creek due to all BART controls) combines the maximum visibility improvements from each facility that would result from required NO_X or SO_2 controls without any consideration of the location of the source or if the impacts and benefits would occur on the same day. The commenter's approach overstates the combined impact at a given Class I area and does not contemplate if sources are located near each other and would likely impact a Class I area at the same time. Contrary to the commenter's description of the methodology used to estimate the total visibility benefits of BART controls,[344] the commenter simply added the CALPUFF modeled deciview visibility benefits for each control. These benefits represent the maximum (98th percentile) visibility benefits at each source based on reductions to the maximum 24-hr emissions modeled over a period of three years. The maximum benefits from controlling one source cannot be added to the maximum benefits of controlling another source as these benefits are not likely to occur on the same day since the sources are not collocated. In addition, the maximum benefits from NO_X controls and SO_2 controls at the same facility cannot be added as they may not occur on the same day. Furthermore, these values represent the benefit on an individual day and not the average visibility benefit on the 20% worst days so it is not appropriate to adjust the visibility conditions on the 20% worst days by this amount as the commenter does in the above figures. In some situations, the days that CALPUFF model maximum or 98th percentile value impacts of the facility occur may not coincide with any of the days that make up the days in the worst 20% days at the Class I area and the visibility benefits modeled by CALPUFF are not directly comparable to the visibility benefits that would be anticipated on the 20% worst days from those specific controls. Furthermore, as discussed elsewhere in this section of the final rule, because deciviews are a logarithmic function of extinction, they cannot be added as the commenter does here. The CALPUFF modeled visibility benefits represent the visibility benefits of controls based on a clean background approach, and not the amount of benefit that would occur from degraded conditions, which would be needed to estimate the improvement in overall visibility conditions in 2018. We estimated the amount of visibility benefit anticipated from all controls against 2018 visibility conditions in estimating the proposed RPGs for 2018. In this calculation we estimated the benefit from all required controls to be 0.21 dv at Caney Creek and 0.19 dv at Upper Buffalo.

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[342] 80 FR at 18990.

[343] The projected haze index at Upper Buffalo of 18.05 dv would keep Upper Buffalo below the glide path until approximately 2038—the end of the third planning period.

Comment: CALPUFF overstates the visibility improvement expected from EPA's proposed controls on Independence, EPA concluded that the cumulative benefit of installing all of the controls in the Proposed FIP—all BART controls plus controls at Independence—would result in visibility benefits at Caney Creek of only 0.21 dv and at Upper Buffalo of only 0.19 dv. Since Independence represents only approximately 36% of the SO_2 point source emissions and 21% of the point source NO_X emissions in Arkansas, one can ascribe only a minor portion of this projected insignificant deciview improvement to controls on Independence (approximately 0.08 dv at Caney Creek and 0.07 dv at Upper Buffalo).[345] Based on this, installation of controls on Independence will yield no discernible visibility improvements.

This demonstrates the illogic of relying on CALPUFF for reasonable progress. Independence's contribution to the deciview improvements EPA projects based on the CENRAP modeling would be much less than the total deciview improvement at Caney Creek of 0.21 dv from the installation of controls at all of the proposed FIP sources and 0.19 dv at Upper Buffalo would not be perceptible to the human eye; nowhere close to the 1.95 dv and 1.78 dv improvement that EPA is claiming based on CALPUFF. Requiring imperceptible visibility improvements is simply unreasonable. The CAA requires only "reasonable progress, not the *most* reasonable progress."[346]

Response: As we discuss in depth elsewhere, visibility improvements from controls must be evaluated on a "clean" background basis to fully assess the benefits from controls. It is not appropriate to consider only the amount by which a potential measure or combination of measures would change the projected overall deciview index value as of the end of the implementation period, *i.e.,* the degree by which the RPGs would differ with and without the control being included in the LTS, as the commenter does here. We also discuss elsewhere in this section of the final rule that the deciview scale is a logarithmic function of extinction and calculations to determine benefits or amount of contribution to visibility impairment must be based on extinction and then converted into deciviews. Nevertheless, the commenter's estimated visibility benefits of 0.08 dv at Caney Creek and 0.07 dv at Upper Buffalo on average across the 20% worst days are approximately a reduction in extinction of 0.8 Mm^{-1} at Caney Creek and 0.7 Mm^{-1} at Upper Buffalo, which is 0.37 dv and 0.32 dv based on a clean background approach for the 20% worst days. In our response to a separate comment above, we discuss that due to the differences in models, model inputs, and metrics, the estimated visibility benefits estimated from CAMx modeling cannot be directly compared to CALPUFF modeled visibility benefits. For one, CALPUFF modeling is used to estimate the maximum visibility benefit based on maximum emissions whereas the CAMx modeling estimates the average visibility benefit over the 20% worst days (as defined by the monitored data) using actual or typical emission levels. As we also discuss above in a separate response to comment, CAMx visibility modeling with source apportionment submitted by Entergy estimates a maximum visibility impact (limited to only the days comprising the 20% worst days) of over 1.5 dv from the Independence facility at both Caney Creek and Upper Buffalo. In some situations, the CALPUFF modeled maximum or 98th percentile impacts of the facility may not coincide with the days that make up the worst 20% monitored days at the Class I area, therefore the maximum impact based on CAMx modeling could be even higher.

With regard to the quote the commenter reproduced from the Eighth Circuit Court's decision in *North Dakota* v. *EPA*,[347] several environmental groups challenged a portion of our final action on North Dakota's regional haze SIP that ultimately approved North Dakota's reasonable progress determination for

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[344] Commenter states: "Trinity derived the 4.3 dv improvement from the CALPUFF modeling by determining the total extinction (in inverse megameters) from each proposed BART source, adding them together, and then calculating the deciview improvement. The resulting 4.3 dv improvement is over five times the total visibility impact attributed to all point sources in Arkansas based on CENRAP's CAMx modeling and 14 times the impact attributed to point sources based on Entergy's current CAMx modeling."

[345] These values are the calculated improvement based on EPA's "scaling methodology." See 80 FR at 18997.

[346] *North Dakota* v. *EPA,* 730 F.3d 750, 767 (8th Cir. 2013).

[347] The commenter states that requiring imperceptible visibility improvements is simply unreasonable and refers to the 8th circuit decision that the CAA requires only "reasonable progress, not the *most* reasonable progress." *North Dakota* v. *EPA,* 730 F.3d 750, 767 (8th Cir. 2013).

NO_X controls for the Coyote Station.[348] The environmental groups objected to North Dakota's decision to reject a control it had evaluated, after having applied the four reasonable progress factors, and subsequently approving another NO_X control as reasonable progress.

We interpret the Court's statement as meaning broadly that just because a more stringent level of control could be technically feasible in a particular instance, it does not mean it necessarily must be required under reasonable progress. We see no conflict with this determination and our proposed Arkansas FIP and requiring controls that may not result in perceptible visibility improvements. In North Dakota's case, we noted technical flaws in North Dakota's analysis, and we noted that we could have reached a different conclusion had we conducted the analysis ourselves, but we ultimately determined these issues did not prevent us from accepting North Dakota's reasonable progress determination. The Court did not find that our conclusions on the issue were arbitrary, stating in part that, "[e]ven if [the control in question] were perhaps the most reasonable technology available, the CAA requires only that a state establish reasonable progress, not the most reasonable progress. In contrast, and as explained in greater detail elsewhere, in our 2012 rulemaking,[349] we made a finding that Arkansas did not complete a reasonable progress analysis and therefore did not properly demonstrate that additional controls were not reasonable under 40 CFR 51.308(d)(1)(i)(A). Thus we disapproved the RPGs Arkansas established for Caney Creek and Upper Buffalo. Our proposed rulemaking completed the reasonable progress analysis and established revised RPGs, since we have not received a revised SIP to correct the portions of the SIP submittal we disapproved. We determined that cost effective controls were in fact available that would have very significant visibility benefits.

Comment: EPA's assessment demonstrates that the Independence Power Plant's emissions have, and will continue to have, very little effect on visibility in any Class I area. EPA's reasonable progress analysis shows that "[o]n the 20% worst days in 2002, sulfate from Arkansas point sources contributed 2.20% of the total light extinction at Caney Creek and 1.99% at Upper Buffalo, and nitrate from Arkansas point sources contributed 0.27% of the total light extinction at Caney Creek and 0.14% at Upper Buffalo." 80 FR at 18989 (footnote omitted). According to EPA, these very small percentages reflect contributions from *all* "Arkansas point sources," not from the Independence Power Plant alone, whose emissions of course contribute only a fraction of these small amounts.

Response: We disagree with the commenter's assertion that the contribution to visibility impairment from Independence is "insignificant" or "minimal." We agree with the commenter's description of the 2002 CENRAP source apportionment data. The CENRAP modeling also projects that Arkansas point sources will be responsible for 3.58% of the total light extinction at Caney Creek and 3.20% at Upper Buffalo in 2018. As we discuss in our proposal, based on 2011 NEI data the Entergy Independence Plant is the second largest source of SO_2 and NO_X point source emissions in Arkansas, accounting for approximately 36% of the SO_2 point-source emissions and 21% of point-source NO_X emissions in the State.[350] Therefore, a significant portion of the total projected visibility impairment on the 20% worst days, on the order of 1% or more, can be expected to be attributable to SO_2 emissions from a single facility, the Independence facility, based on the CERNAP modeling. We discuss in a separate response to comment that results of our CALPUFF modeling, as well as the results of additional CAMx modeling submitted by Entergy, confirm and support that the visibility impairment due to the Independence facility is significant and that emission reductions will result in meaningful visibility benefits towards natural visibility conditions.

6. Visibility Benefit of Entergy Arkansas Proposal

Comment: Entergy's proposed combination of controls and lower SO_2 emission rates will ensure that the Class I areas achieve virtually the same reasonable progress as EPA's proposal but at a cost of over $2 billion less than the proposal.[351] Based on Entergy's CAMx modeling and Ranked Statistical Analysis, the difference in the haze index between the proposed FIP controls and Entergy's proposal is 0.05 dv at Caney Creek and 0.07 dv at Upper Buffalo.

Response: We discuss the "ranked statistical analysis" submitted by the commenter in the response to comments elsewhere. We disagree with the commenter that the Entergy proposed control scenario achieves "virtually" the same visibility benefits as the controls required in this FIP. We examined the estimated visibility benefits of the FIP and Entergy's proposal from the commenter's CAMx photochemical modeling. We note that both scenarios include benefits from all required BART controls at all subject-to-BART facilities with the exception of White Bluff. The modeled FIP scenario also includes SO_2 and NO_X controls at both Independence and White Bluff. The modeled Entergy proposal scenario includes the elimination of emissions from White Bluff, an approximate 15% reduction in SO_2 emissions from Independence and roughly similar NO_X reductions at Independence as required in the FIP.

Entergy's proposal achieves less visibility benefit than the FIP controls at Arkansas' Class I areas, most significantly at Upper Buffalo where the benefit from Entergy's proposal is approximately only 63% of the benefit from the FIP (1.54 Mm^{-1} from the FIP compared to 0.97 Mm^{-1} from Entergy's Proposal, see the RTC document for additional information). As discussed above, CAMx source apportionment modeling submitted by Entergy shows that Entergy Independence has significant visibility impacts at both Arkansas Class I areas. At Upper Buffalo, the Independence facility contributes more to visibility impairment than all the subject-to-BART sources addressed in this action combined. Additional reductions from the elimination of emissions from the White Bluff facility under Entergy's proposal are much too small to compensate for the lack of significant SO_2 reductions at Independence. Furthermore, Entergy's proposal does not achieve these benefits until 2028, seven years after the full benefits from the FIP would be realized. We discuss other aspects of Entergy's proposal, including uncertainty in emissions at White Bluff after the cessation of coal-burning, and issues concerning the BART requirements for White Bluff in separate responses to comment elsewhere in this document.

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[348] See EPA's final rule at 77 FR 20894, 20945 (April 6, 2012).

[349] 64 FR at 35732.

[350] 80 FR at 18991.

[351] Entergy Arkansas Inc. stated that it is proposing near-term interim controls and the cessation of coal combustion at White Bluff by 2028. Entergy is proposing to meet lower SO_2 emission rates at White Bluff Units 1 and 2 and Independence Units 1 and 2 by 2018, and is willing to install LNB/SOFA at all four units and meet a 30-day rolling average NO_X emission rate of 1,342.5 lb NO_X/hr, within three years after the effective date of the final FIP as part of its multi-unit approach. Entergy's comments with regard to the proposed NO_X rate are discussed elsewhere in this final rule.

We also disagree with the commenter's use of the results of their ranked statistical analysis (the "projected haze index" shown in the Entergy Arkansas Inc.'s submitted comments in figures 13 and 14) as the starting point for calculating the overall visibility benefits from the FIP or the commenter's proposed alternative. As discussed elsewhere in this section of the final rule, the ranked statistical analysis is simply a projection of future visibility conditions based on past improvement and is not directly tied to any additional required emission reductions in the next few years that would result in this future visibility improvement from current conditions to this projected value in 2018.

7. Observed Visibility Improvements

Comment: Trinity was tasked by Entergy Arkansas with conducting a statistical analysis of observed visibility data gathered through the IMPROVE program to statistically determine the future trends in the regional haze index values. Trinity conducted a simple Trend Statistical Analysis and more robust Ranked Statistical Analysis to determine the projected haze index in 2018.[352]

For Caney Creek and Upper Buffalo, respectively, the observed values are well below the glide path with a consistent downward trend in the observations. This downward trend is consistent with the historical (2002–2011) trend in decreasing sulfur dioxide (SO_2) emissions from tier 1 sources located in the states contributing significantly to the Caney Creek and Upper Buffalo Class I Areas.[353] Pursuant to the NEI emissions data, the SO_2 emissions have significantly decreased since 2005 to 2011 in all source categories, including especially a more than 50% drop due to fuel combustion from electric utilities and a 67% drop in the fuel combustion from industrial sources. Based on the significant downward trend in the observed data and the actual SO_2 emissions data, the future haze index value in 2018 is expected to be lower than the currently predicted glide path. The lower haze index value in 2018 will be additionally supported by the anticipated implementation of regulations further curbing emissions.

In order to statistically calculate the future deciview haze index values using observed data instead of relying on the CENRAP modeling, two statistical analyses were performed and evaluated to determine the most appropriate analysis for predicting the haze index values based on observed data: Trend Analysis, and Ranked Statistical Analysis. The 2018 average of the 20% worst days for visibility was calculated to be 20.07 dv for Caney Creek and 20.91 dv for Upper Buffalo. These numbers are far below the URP for the first planning period and demonstrate that no source in Arkansas, including Independence, needs to install controls for Arkansas to remain below the glide path.

Response: As we discuss in section V.C of this final rule, being projected to be on or below the URP glidepath in 2018 (or even beyond) does not automatically mean that no controls or evaluation under reasonable progress is needed in this planning period. The commenter presents SO_2 emissions data from 2002, 2005, 2008, and 2011 for states identified by the commenter as impacting visibility at the Arkansas Class I areas. These data show significant emissions reductions over this time period and are consistent with observed visibility improvement at the Arkansas Class I areas. However, most of the visibility improvement currently observed in Arkansas appears to be due to emissions reductions that have taken place outside the state. Arkansas emissions do not exhibit the same downward trend as presented for the other states that impact visibility at the Arkansas Class I areas.[354] More recent annual emissions from 2012–2014 are actually higher than emissions from the 2008–2011 period and there is no downward trend in emissions from those point sources with the largest visibility impacts, those from fuel combustion at electric utilities. To the extent that the commenters are suggesting that Arkansas should be relieved of its regional haze obligations because other states' emission reduction efforts have already resulted in significant visibility improvement at Arkansas' Class I areas, this is incorrect. Rather Arkansas, and EPA in standing in Arkansas' shoes, must consider the statutory factors in addressing the long term strategy and reasonable progress requirements.

We disagree with the commenter that the CENRAP CAMx predicted 2018 haze index is overly conservative. The comments indicate a lack of understanding of how reasonable progress goals are established, as well as the imports of the goals as opposed to the measures adopted to ensure reasonable progress. As we state in the Regional Haze Rule, the reasonable progress goal(s) set by the state, or EPA when promulgating a FIP, are not enforceable. The reasonable progress goals are an analytical tool used by EPA and the states to estimate future visibility conditions and track progress towards the goal of natural visibility conditions. Accordingly, the RPGs must represent an estimate of the degree of visibility improvement that will result in a future year from changes in emissions inventories, changes driven by the particular set of control measures adopted in the regional haze SIP or FIP to address visibility, as well as all other enforceable measures expected to reduce emissions. Given the forward-looking nature of reasonable progress goals and the range of assumptions that must be made as to emissions in the future, we expect there to be some uncertainty in the estimates of future visibility.

The statistical analyses provided by the commenter are simply extrapolations of future visibility conditions based on observed reductions in visibility impairment in the past. Future visibility projections must be directly tied to projections of future emissions, and anticipated reductions due to federal and state requirements. Current 5-yr average (2010–2014) observed visibility conditions are 21.8 dv at Caney Creek and 21.6 dv at Upper Buffalo. Any future improvements in overall visibility conditions at the Arkansas Class I areas between now and 2018 will be due to future emission reductions during that time period. Commenters have not provided any specific information suggesting anticipated enforceable emission reductions from those Arkansas point sources with significant visibility impacts or other sources that would result in the almost 2 dv visibility improvement by 2018 projected by the commenter at Caney Creek in their statistical analysis. Furthermore, as discussed above, any anticipated emission reductions from sources in other states do not relieve Arkansas of its regional haze obligations. The BART requirements under § 51.308(e) must be met for those specific sources that meet the BART criteria and contribute to visibility impairment. The determination of whether an RPG and the emission limitations and other control measures upon which it is based constitute reasonable progress is made by conducting certain analyses and meeting the requirements under § 51.308(d)(1).

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[352] Trinity's report is included as Exhibit D *IMPROVE Data Statistical Analysis,* Trinity Consultants (July 2015) to Entergy Arkansas, Inc.'s comments.

[353] See Figure 2–3 of Exhibit D to Entergy Arkansas, Inc.'s comments.

[354] See RTC document for additional information on Arkansas source category SO_2 emissions from 2004 to 2014.

The RPGs are an analytical tool the state and we use to evaluate whether the measures in the implementation plan are sufficient to achieve reasonable progress. What is enforceable under the RH rule are the emission limitations and other control measures that apply to specific sources, and upon which the RPGs are based. Since the emission limitations we are requiring in our FIP for specific Arkansas sources (which is what our revised RPGs are based upon) are not currently being achieved, we disagree that visibility at the Class I areas has already improved beyond what we would require in our FIP and that our FIP is therefore unjustified and unwarranted. The emission reductions required in this action will result in significant visibility improvements at the Class I areas beyond what is currently being achieved or observed. As discussed elsewhere throughout this final rule, the commenter's photochemical modeling analysis provides an additional demonstration that the controls required in this action result in visibility benefits beyond current observed visibility conditions and serve to accelerate progress towards natural visibility conditions.

8. Reasonable Progress Goals

Comment: EPA's proposed RPGs are more stringent than Arkansas' proposed RPGs in its 2008 Regional Haze SIP, which would have ensured that Arkansas is on track to achieve natural visibility conditions by 2064. Arkansas is reducing regional haze in its Class I areas at a higher rate than both the URP, which was approved by EPA, and Arkansas' initial proposed RPGs. As indicated by the URP, Arkansas is well on track to reaching natural visibility conditions by 2064 and more stringent RPGs than those in Arkansas' 2008 Regional Haze SIP are not necessary. EPA should withdraw the Proposed FIP and ensure that revised RPGs in any subsequent plan are within the scope of EPA's authority to address impairment of visibility.

The differences in projected 2018 visibility conditions at Caney Creek and Upper Buffalo that are attributable to all of the proposed FIP controls—including both FIP BART and FIP reasonable progress requirements—will be imperceptibly small (*i.e.*, improvements of, at most, 0.21 dv and 0.19 dv, respectively, at Caney Creek and Upper Buffalo). The minimal visibility improvements that EPA's proposed reasonable progress emission control requirements would produce would come at exorbitant costs. Additionally, even the negligible changes in visibility represented by EPA's proposed revised RPGs are greatly overstated because some controls will not be in place until after 2018.

Commenters also state that the methodology utilized by EPA in estimating the RPGs is oversimplified and inaccurate. EPA chose a method of determining RPGs that is admittedly inferior and less sophisticated than the alternative approach, which EPA rejected in Arkansas but used in Texas: CAMx photochemical modeling. EPA admits that it has not performed its own modeling in a manner adequate to develop "refined numerical RPGs." Some commenters stated that EPA used CALPUFF, which is not a photochemical grid model, to develop a "quick-and-dirty" RPG analysis in the proposed Rule.

Response: As we discuss in more detail elsewhere in our response to comments, we agree that Arkansas proposed RPGs in its 2008 regional haze SIP that fell below the URP. However, in our 2012 rulemaking,[355] we made a finding that Arkansas did not complete a reasonable progress analysis and therefore did not properly demonstrate that additional controls were not reasonable under 40 CFR 51.308(d)(1)(i)(A). Thus we disapproved the RPGs Arkansas established for Caney Creek and Upper Buffalo. In our proposed rulemaking, we completed the reasonable progress analysis and established revised RPGs, since we have not received a revised SIP to correct the portions of the SIP submittal we disapproved. As discussed in our proposal and in our RTC document, we focused our reasonable progress analysis on the Entergy Independence facility because of its significant emissions of NO_X and SO_2 and its large potential to impact visibility at nearby Class I areas. We determined that cost-effective controls were available for units at this facility and that they would result in significant visibility benefits. We respond to specific comments concerning the visibility benefits from controls on the Independence facility in separate responses to comments. We also completed five-factor BART analyses and determinations for subject-to-BART facilities where we had previously disapproved the BART determination in the 2008 Arkansas regional haze SIP. Our proposed RPGs reflected the visibility benefits anticipated from the implementation of controls across the subject-to-BART facilities and the Independence facility required in this action. As we discuss in our proposal and in response to comments, we have determined that these controls are cost-effective and result in significant visibility benefits that provide for progress towards the goal of natural visibility conditions. As we discuss below in a separate response to comment, after considering comments received, we agree that the RPGs should reflect anticipated visibility conditions at the end of the implementation period in 2018 rather than the anticipated visibility conditions once the FIP has been fully implemented. We are finalizing RPGs that represent the visibility conditions anticipated on the 20% worst days at Caney Creek and Upper Buffalo by 2018.

We disagree with the commenter that the amount of visibility improvement due to our proposed FIP is "insignificant." We address comments concerning the perceptibility of visibility improvements in response to comments elsewhere. The required controls are estimated to improve overall visibility benefits compared to the CENRAP projected visibility conditions for 2018 by approximately 0.2 deciviews, a reduction in light extinction of about 2 Mm^{-1} at Caney Creek and 1.8 Mm^{-1} at Upper Buffalo. Once fully implemented, the required controls to meet the BART requirements, as well as required controls on the Independence facility result in an approximate 2% improvement in overall visibility conditions projected by CENRAP at both Caney Creek and Upper Buffalo on the 20% worst days. Our technical record demonstrates that the required controls reduce impacts from these sources and result in meaningful visibility benefits towards the goal of natural visibility conditions. The required controls reduce the projected visibility impairment due to all Arkansas point sources by 50% at Caney Creek and 50% at Upper Buffalo. We note that the required controls actually result in larger visibility improvements than calculated here because the CENRAP projections already included an assumption of large emission reductions due to SO_2 BART at Flint Creek, as well as NO_X controls at White Bluff and Flint Creek.[356]

We disagree with the commenter that our proposed RPGs overstated the visibility benefit of controls or that they are inaccurate. In our proposal, we acknowledged that the methodology we utilized to estimate the revised RPGs is not as refined as developing an updated model projection. However, it allows us to translate the emission reductions contained in the proposed FIP into quantitative RPGs, based on modeling previously performed by the CENRAP. These proposed RPGs provided an estimate of the visibility benefit of all the required controls compared to the 2018 visibility conditions projected by the state and established in their SIP that would result without the required controls. After considering comments received, we agree that the RPGs should reflect anticipated visibility conditions at the end of the implementation period in 2018 rather than the anticipated visibility conditions once the FIP has been fully implemented, and have accordingly revised the 2018 RPGs. RPGs, unlike the emission limits that apply to specific reasonable progress and BART sources, are not directly enforceable. Rather, the RPGs are an analytical framework considered by us in evaluating whether measures in the implementation plan are sufficient to achieve reasonable progress. Our FIP imposes emissions limitations that we conclude to be necessary under the CAA for the first planning period. Ideally, these controls would be installed and the emission limitations achieved, so the visibility improvements can be realized and built on in a subsequent comprehensive periodic SIP revision (see 40 CFR 51.308(f)). Arkansas may choose to use these RPGs for purposes of its progress report (along with a consideration for what controls had already been implemented and what controls would be implemented in the near future), or may develop new RPGs for approval by us along with its progress report, based on new modeling or other appropriate techniques, in accordance with the requirements of 40 CFR 51.308(d)(1) in evaluating the adequacy of their SIP (or this FIP) to meet the established RPGs.

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[355] 64 FR at 35732.

[356] 2002 CENRAP modeled SO_2 emissions for Flint Creek were 11,165 tpy and 2018 CENRAP modeled SO_2 emissions were 2,896 tpy, an assumed 75% reduction in emissions.

We discuss our selection of the CALPUFF model for evaluating single-source visibility impacts in a separate response to comment above. In the response, we also explain the model selection for our Texas action and refer the reader to our detailed explanation in the RTC that accompanies that action. Commenters are incorrect and confuse the single-source visibility analysis used to evaluate the visibility benefit of controls on a specific source with the assessment of overall visibility conditions. We did not use the CALPUFF modeling to develop the new reasonable progress goals we establish in this rulemaking. The RPGs are based on adjusting the CENRAP 2018 CAMx photochemical modeling based on source apportionment modeling results and emission inventory data. As we stated in the proposed rulemaking, we did not perform additional photochemical modeling to directly model the new projected visibility goals due to the time and resource demands associated with photochemical modeling. The commenters are also incorrect in their comparison of approaches for establishing new RPGs between this action for Arkansas and our previous action in Texas. For both Texas and Arkansas, we utilized the CENRAP 2018 CAMx modeling that estimated the 2018 RPGs and then adjusted those RPGs to account for estimated visibility improvement due to required controls. In neither case did we perform a full photochemical modeling analysis to model all the required controls and project the future visibility conditions. In both cases, the 2018 RPGs were adjusted based on a scaling of the source apportionment model results and emission inventory changes.

Comment: The demonstration methodology used by EPA is unscientific. EPA used a ratio of emission rates from BART sources to Arkansas point sources to scale the modeled predicted haze index. First, there is no evidence to prove that the CAMx predicted modeling results are linearly correlated with emission rates. In fact, the CAMx modeling fundamentally is based on photochemical reactions. Therefore, the relationship between variation in the emission rates and predicted concentration is complicated. Second, a deciview is a logarithmic scale based on the concept that one deciview is the minimum change in the visibility perceptible to a human observer. As such, deciviews cannot be added or subtracted directly. Therefore, fractioning or scaling deciviews based on emission rates is illogical.

Another commenter was supportive of our approach, stating that in Texas, the model results were used to demonstrate that the overall change in species concentrations was very nearly linearly proportional to the change in emission levels for an individual source (with very high linear correlation coefficients near 1.0). This strongly supports the use of the emission scaling approach for Arkansas. If the CAMx model were used to determine the impact of emission controls on a single source in Arkansas (such as Independence), it is therefore expected that the modeled reductions in sulfate and nitrate concentrations at each of the Class I areas will be very nearly proportional to the SO_2 and NO_X concentration reductions. In other words, the emission scaling approach has been shown to be mathematically sound and quite appropriate, especially considering the resources that would be required to exercise CAMx separately for each control measure at each evaluated source.

Response: We disagree with the comments that the methodology used to estimate overall visibility benefits from all required controls control level emissions was unreasonable or unscientific. We agree with comments that the approach we followed is reasonable and based on a scaling of visibility extinction components due to Arkansas point sources in proportion to emission changes from the required controls at Arkansas point sources. The commenter is incorrect in suggesting that we developed a linear relationship between emissions and deciviews and then commenting that this ''fractioning or scaling of deciviews'' is flawed because the relationship between light extinction and deciviews is exponential. We properly developed a linear relationship between emissions and light extinction (inverse Megameters), not deciviews.

We agree with the commenters, that in general, the relationship between downwind concentrations and emissions can be complicated and non-linear due to complex chemistry, including the fact that reductions in sulfur emissions can result in an increase in ammonium nitrate. For estimating the total visibility benefit from all controls and estimating a new reasonable progress goal that reflects those controls, we relied on the CENRAP's 2018 CAMx modeling results, including source apportionment results, and the projected emission inventories, and scaled the results as described in the TSD, similar to what was done in our previous action in Arizona and Texas. While we acknowledge that this approach is not as refined an estimate as would be attained in performing a new photochemical modeling run, it is based on scaling to adjust earlier photochemical modeling results that took into account the complex chemistry that impacts the overall visibility. The uncertainty in the visibility benefit from these controls introduced by the linear extrapolation does not impact the overall conclusions. Furthermore, in our technical analysis developed to support our action on Texas regional haze, we observed that for each facility and Class I area, the available modeled visibility impact was linear with respect to emissions with high correlation.[357] Following this approach we estimated that when fully implemented, the required controls would result in a reduction in light extinction of about 2 Mm^{-1} at Caney Creek and 1.8 Mm^{-1} at Upper Buffalo on the 20% worst days. As discussed elsewhere, Entergy Arkansas submitted additional CAMx modeling with their comments. This photochemical modeling projects a 2.95 Mm^{-1} reduction at Caney Creek and 1.54 Mm^{-1} reduction at Upper Buffalo when compared to the Entergy's base case modeling for 2018 for the 20% worst days.[358]

Comment: Even the negligible changes in visibility represented by EPA's proposed revised RPGs are greatly overstated because the bulk of the EPA-projected visibility improvements are due to proposed SO_2 emission limits for BART and reasonable progress that have a five-year compliance deadline and thus will not become operative until at least 2020. No sound basis exists for the projections of visibility improvements by 2018 that EPA sets out in the proposed rule. Those EPA projections are inaccurate and unsupportable.

In this regard, EPA fails to explain why (a) the Agency may permissibly use a concededly oversimplified and inaccurate shortcut methodology for calculating RPGs in its FIP, on the grounds that EPA otherwise would have to conduct time-consuming and complicated modeling, *see id.*, but (b) Arkansas and other states apparently are held to a much higher standard for *their* RPG analyses, *see id.* In proposing and promulgating a FIP for Arkansas, EPA merely stands in the state's shoes. Accordingly, if EPA may lawfully comply with the CAA and the regional haze rules by conducting and relying on this sort of analysis that is "not refined" but (purportedly) sufficient to support its FIP's RPGs, then states also may do so to support their SIPs' RPGs. On the other hand, to the extent EPA does not believe that RPGs based on such an abbreviated analysis would be approvable if submitted by a state in a SIP, EPA cannot lawfully promulgate the RPGs that it proposes based on the analysis presented in its proposed rule.

Response: We proposed RPGs for the 20% worst days for Caney Creek and Upper Buffalo of 22.27 dv and 22.33 dv, respectively that reflected the anticipated visibility conditions resulting from the combination of control measures from the approved portion of the 2008 Arkansas Regional Haze SIP and our FIP proposal. After considering these comments, we agree that the RPGs should reflect anticipated visibility conditions at the end of the implementation period in 2018 rather than the anticipated visibility conditions once the FIP has been fully implemented. This approach is consistent with the purpose of RPGs and the direction provided in our 2007 Reasonable Progress Guidance.

Section 169B(e)(1) of the CAA directed the Administrator to promulgate regulations that "include[e] criteria for measuring 'reasonable progress' toward the national goal." Consequently, we promulgated 40 CFR 51.308(d)(1) as part of the Regional Haze Rule. This provision directs states to develop RPGs for the most and least impaired days to "measure" the progress that will be achieved by the control measures in the state's long-term strategy "over the period of the implementation plan." [359] The current implementation period ends in 2018. RPGs "are not directly enforceable" like the emission limitations in the long-term strategy.[360] Rather, they fulfill two key purposes: (1) Allowing for comparisons between the progress that will be achieved by the state's long-term strategy and the URP,[361] and (2) providing a benchmark for assessing the adequacy of a state's SIP in 5-year periodic reports.[362] Consequently, in our 2007 Reasonable Progress Guidance, we indicated that states could consider the "time necessary for compliance" factor by "adjust[ing] the RPG to reflect the degree of improvement in visibility achievable within the period of the first SIP if the time needed for full implementation of a control measure (or measures) will extend beyond 2018." [363] In other words, RPGs need not reflect the visibility improvement anticipated from all of the control measures deemed necessary to make reasonable progress (as a result of the four-factor analysis) and included in the long-term strategy.

In this instance, we are taking final action on the Arkansas Regional Haze FIP 9 years after the state's initial SIP submission was due.[364] As a result, only some of the control measures that we have determined are necessary to satisfy the BART and reasonable progress requirements will be installed by the end of 2018. Some controls will not be installed until 2021. Because RPGs are unenforceable analytical benchmarks, we think that it is appropriate to follow the recommendation in our 2007 Reasonable Progress Guidance and finalize RPGs that represent the visibility conditions anticipated on the 20% worst days at Caney Creek and Upper Buffalo by 2018. These RPGs are listed in the table below: [365]

TABLE 21—REASONABLE PROGRESS GOALS FOR 2018 FOR CANEY CREEK AND UPPER BUFFALO

Class I area	2018 RPG 20% Worst days (dv)
Caney Creek	22.47
Upper Buffalo	22.51

We disagree with the commenter that the proposed RPGs overstated the visibility benefit of controls or that they are inaccurate. In our proposal, we acknowledged that the methodology we utilized to estimate the RPGs is not as refined as developing an updated model projection. However, it allows us to translate the emission reductions contained in the proposed FIP into quantitative RPGs, based on modeling previously performed by the CENRAP.[366] The proposed RPGs provided an estimate of the visibility benefit of all the required controls compared to the 2018 visibility conditions projected by the state and established in their SIP that would result without the required controls. Our final RPGs, calculated using the same methodology, reflect the anticipated visibility conditions at the end of the implementation period in 2018 and the visibility benefit from those controls required to be implemented by the end of 2018. RPGs, unlike the emission limits that apply to specific reasonable progress and BART sources, are not directly enforceable.[367] Rather, the RPGs are an analytical framework considered by us in evaluating whether measures in the implementation plan are sufficient to achieve reasonable progress.[368] Our FIP imposes emissions limitations that we conclude to be necessary under the CAA for the first planning period. Ideally, these controls would be installed and the emission limitations achieved, so the visibility improvements can be realized and built on in a subsequent comprehensive periodic SIP revision (see 40 CFR 51.308(f)). Arkansas may choose to use these RPGs for purposes of its progress report (along with a consideration for what controls had already been implemented and what controls would be implemented in the near future), or may develop new RPGs for approval by us along with its progress report, based on new modeling or other appropriate techniques, in accordance with the requirements of 40 CFR 51.308(d)(1) in evaluating the adequacy of their SIP (or this FIP) to meet the established RPGs.

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[357] See 81 FR 296, 335 and the FIP TSD (document ID: EPA–R06–OAR–2014–0754–0007).

[358] See Entergy CAMx Results 2015–1124_FINAL.xls.

[359] 40 CFR 51.308(d)(1).

[360] 40 CFR 51.308(d)(1)(iv).

[361] 40 CFR 51.308(d)(1)(ii).

[362] 40 CFR 51.308(g)–(h).

[363] "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," at 5–2.

[364] We discuss in section II.A of this final rule the history of the state's submittals and our actions.

[365] These RPGs are calculated using the same methodology described in our proposal and TSD. See "CACR UPBU RPG analysis 2018.xlsx" for additional information on the calculation of the RPGs.

[366] 80 FR 18944, 18998.

[367] 40 CFR 51.308(d)(1)(v).

[368] 64 FR at 35733 and 40 CFR 51.308(d)(1)(v).

We disagree that Arkansas would be held to a higher standard or that the methodology utilized by EPA to adjust the RPGs would not be approvable if submitted by a state. The approach followed by EPA in this action, using scaling to adjust the modeled RPGs based on photochemical source apportionment model results is reasonable and meets the requirements of the Regional Haze Rule. In our 2012 rulemaking,[369] we made a finding that Arkansas did not complete a reasonable progress analysis and therefore did not properly demonstrate that additional controls were not reasonable under 40 CFR 51.308(d)(1)(i)(A). Thus we disapproved the RPGs Arkansas established for Caney Creek and Upper Buffalo. In our proposed rulemaking, we completed the reasonable progress analysis and established revised RPGs using the methodology described above, since we have not received a revised SIP to correct the portions of the SIP submittal we disapproved.

9. Additional Modeling Comments

Comment: We received additional specific modeling comments concerning emission rates modeled to assess baseline visibility impacts for Independence, White Bluff and Flint Creek. We also received separate comments concerning our modeling analysis and assessment of NO_X controls on Lake Catherine, White Bluff and Independence.

Response: We address these comments in our RTC document.

K. Legal

We received several comments on EPA's legal authority to promulgate a FIP under the Regional Haze Rule, and, more specifically, to address the Rule's reasonable progress requirements. Below is a summary of some of the more significant comments. For a more detailed explanation, please refer to the RTC document that is a part of the docket for this rulemaking.

We received comments that EPA is prohibited from requiring controls for this planning period if they cannot be installed during this planning period. We disagree with these comments. The CAA establishes our authority and responsibility to promulgate a FIP that addresses the requirements of the regional haze program where a State's SIP submission fails to meet the program requirements. Although the first planning period, ending in 2018, includes RPGs specific to that planning period, there is no limitation in the CAA or the Regional Haze Rule that controls contained in a SIP (or a FIP) must be fully implemented by the end of the planning period. As both the long-term strategy and BART requirements may extend beyond the first planning period, it follows that EPA has FIP authority to fill in "gaps" or "inadequacies" related to those components irrespective of whether controls can be put into place by 2018. In addition, any emission limitations that prove to be required by the CAA for the first planning period need to be achieved at their soonest opportunity, not delayed, deferred, or avoided for later planning periods when even further progress may be required in order to achieve the national visibility goal.

We also received comments that we had no legal basis for requiring alternative proposals for SO_2 and NO_X control measures that would address the regional haze requirements for White Bluff Units 1 and 2 and Independence Units 1 and 2 for this planning period to achieve *greater* reasonable progress than the BART and reasonable progress requirements that EPA has proposed for the first planning period. Our response explains our analysis of Entergy's four-unit approach and clarifies how our evaluation of that approach was consistent with the Regional Haze Rule's BART alternative and reasonable progress requirements.

In addition, we received several comments that our proposed FIP was not in keeping with the legal requirements for reasonable progress and long term strategy as spelled out in the Regional Haze Rule and EPA Guidance. We disagree and explain in more detail in the RTC document that we disapproved the reasonable progress determination Arkansas submitted in 2012 because the State did not conduct the required four-factor analysis. The CAA requires us to stand in the State's shoes and promulgate a FIP that addresses the requirements of the Regional Haze Rule that we disapproved, including reasonable progress and the long term strategy for Arkansas' Class I areas.

We also received comments that our proposed FIP did not take into account the leading role of the state in developing a plan that addresses the regional haze program and thus is not in keeping with cooperative federalism. We disagree that EPA ignored the principles of cooperative federalism. Arkansas did develop a regional haze plan. We reviewed it and partially approved and disapproved the plan in 2012. The CAA creates a mandatory duty for EPA to either approve a state SIP revision submittal that corrects the deficiency or promulgate a FIP within two years of the effective date of the disapproval of a state plan.

We received comments that EPA does not have authority to finalize a FIP after two years have elapsed from our initial disapproval of the Arkansas Regional Haze SIP. We describe in more detail in the RTC document our disagreement with this interpretation of what is required under the Clean Air Act. The Tenth Circuit has upheld EPA's authority to finalize a Regional Haze FIP after the two years have passed for EPA to act on Oklahoma's Regional Haze SIP.

We also received comments that our proposed FIP was not in keeping with Executive Orders 12866 and 13211. Our response is that our proposed action is not subject to Executive Order 13211 because it is not a "significant regulatory action" under Executive Order 12866; therefore, the proposed FIP is not a rule of general applicability because its requirements apply and are tailored to only seven individually identified facilities. Thus, it is not a "rule" or "regulation" within the meaning of E.O. 12866 and this action is not a "regulatory action" subject to 12866. Since E.O. 13211 applies only to "significant regulatory actions" under E.O. 12866, this action is not subject to review under E.O. 13211.[28] Evaluation of the proposal under E.O. 13211's criteria is therefore not required.

We respond in greater detail in the RTC document to comments that EPA did not adequately consider costs to ratepayers as is required under Arkansas law in developing air regulations. States are under an obligation to submit a Regional Haze SIP to EPA which complies with federal requirements. While states enjoy flexibility in developing a SIP and can meet additional state requirements as long as the federal requirements are satisfied, in the event that EPA must step in and create a Federal Implementation Plan, we must meet all federal requirements. We are not subject to state law requirements related to how the cost analyses must be conducted or what specific factors need to be considered. We did consider costs in great detail to ensure that the controls required by the FIP are cost-effective, appropriate in light of the visibility reductions achieved, and consistent with expectations in other SIPs and FIPs.

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[369] 77 FR 14604.

We received several general comments including a claim that documents that EPA relied for its rulemaking were not in the docket. As explained more fully in our RTC document, the documents referred to are briefing sheets and did not serve as the basis for EPA's decision making. The docket contains all of the documents that serve as our basis for our rulemaking for Arkansas Regional Haze.

L. Interstate Visibility Transport

Comment: The good neighbor visibility provision in 42 U.S.C. 7410(a)(2)(D)(i)(II) prohibits interference with "measures" required to be included in another State's implementation plan to protect visibility. EPA has not demonstrated that any of these sources in its FIP proposal are interfering with any visibility control measure in any other state's SIP. In its FIP proposal, EPA states that the Arkansas SIP did not ensure that emissions from Arkansas sources "do not interfere with other states' visibility programs as required by section 110(a)(2)(D)(i)(II) of the CAA."[370] The visibility protection requirement of section 110(a)(2)(D)(i)(II) does not protect against interference with either other states "efforts" or other states "programs." Unlike the language in section 110(a)(2)(D)(i)(I), which prohibits emissions that contribute significantly to nonattainment or maintenance of a NAAQS in another state, the visibility protection requirement is narrower and only protects against interference with specific measures, that is, actions included in another state's plan to achieve a visibility goal. Reasonable progress goals, projected deciview improvements from regional efforts, and the like are goals or standards; they are not "measures" taken by or enforced by a state. There is nothing in the record demonstrating that any of the sources in the FIP proposal interfere with any measure included in any other state's SIP for the purpose of protecting or improving visibility. To the extent that EPA's proposed interstate visibility transport FIP is not based on direct interference with a control measure in another state's regional haze SIP (in contrast to interference with a regional haze related visibility goal), EPA's interpretation is contrary to the clear and express language of Section 110. EPA's interpretation also is contrary to the CAA's clear direction that each state is to determine its own emission limits, schedules of compliance and other measures for sources in that state for purposes of visibility protection under section 169A. EPA's interpretation would impermissibly give one state the power to control another state's regional haze SIP decisions, including its BART and reasonable progress determinations. Finally, even if the CAA's good neighbor visibility provision required a SIP to contain emission limits for sources that contribute to visibility impairment at a Class I area in another state, EPA has not demonstrated that any of the controls in its FIP proposal are "necessary" for that purpose, considering based on the uncertainty in the modeling that these controls will result in actual visibility improvements.

Response: Section 110(a)(2)(D)(i)(II) does not explicitly define what is required in SIPs to prevent the prohibited impact on visibility in other states nor does it explicitly define how to determine if a state's emissions are interfering with another state's measures to protect visibility. We have interpreted this statutory requirement as providing that a Regional Haze SIP that requires emission reductions consistent with the assumptions the relevant RPO used to model the RPGs for Class I areas in other states satisfies a state's obligation to ensure that its own emissions do not interfere with another state's visibility measures. States may rely on a fully approved Regional Haze SIP to demonstrate that a SIP for 8-hour ozone or $PM_{2.5}$ contains adequate provisions to prohibit emissions that interfere with visibility measures in other states.[371]

Arkansas chose to address the interstate visibility transport requirement under section 110(a)(2)(D)(i)(II) by relying on its 2008 Regional Haze SIP submittal to achieve the emissions reductions necessary to meet this requirement. However, due to our previous partial disapproval of this submittal,[372] the Arkansas SIP does not currently include all of the emission reductions Arkansas agreed to achieve in its RPO process. Arkansas is a member state of CENRAP, the regional planning committee on regional haze. Each CENRAP state based its regional haze plan and RPGs on the CENRAP modeling, which was based in part on the emissions reductions each state intended to achieve by 2018. Within the CENRAP process, Arkansas promised to achieve emission reductions corresponding to BART, and these emissions reductions were included in the CENRAP modeling used by the participating states to develop their RPGs and Regional Haze SIPs. However, EPA previously disapproved some of Arkansas' BART determinations; therefore, the State's SIP does not currently provide for all the emissions reductions that Arkansas itself determined to be necessary to meet the interstate visibility transport requirement. Because Arkansas has not provided any other analysis or explanation of how the Arkansas SIP fulfills the requirement of 110(a)(2)(D)(i)(II), it follows that the Arkansas SIP does not contain adequate provisions to prohibit emissions that would interfere with other states' visibility protection measures.

We disagree with the commenter's contention that our interpretation is contrary to the CAA because the Act gives clear direction that each state is to determine its own emission limits, schedules of compliance and other measures for sources in that state for purposes of visibility protection under section 169A. The commenter states that our interpretation would impermissibly give one state the power to control another state's regional haze SIP decisions. However, the commenter's interpretation is inconsistent with section 110(a)(2)(D)(i)(II)'s "good neighbor" provision, which requires states to prohibit emissions that interfere with other states' measures to protect visibility. This statutory requirement anticipates that a state may be required to adjust its own emissions based on the impacts of those emissions on other states. Our Regional Haze Rule, which was promulgated through notice-and-comment rulemaking in 1999, also requires that states develop "coordinated emission management strategies" when necessary to prevent interstate visibility impairment.[373] Thus, while the CAA and our regulations do not allow one state to "control" another's regional haze planning, they do contemplate that a state may be required to prohibit emissions that interfere with visibility in another state's Class I areas.

As stated above, Arkansas elected to address the interstate visibility transport requirement under section 110(a)(2)(D)(i)(II) by relying on the BART determinations that are part of its

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[370] 80 FR at 18998.

[371] See "2006 Guidance for SIP Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ NAAQS" at pages 9–10.

[372] 77 FR 14604.

[373] 40 CFR 51.308(d)(3)(i).

Regional Haze SIP submittal. Arkansas could have elected to address the interstate visibility transport requirement under section 110(a)(2)(D)(i)(II) by other means; we have elsewhere determined that states may also be able to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with something less than an approved Regional Haze SIP.[374] In other words, an approved Regional Haze SIP is not the only possible means to satisfy the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility; however such a SIP could be sufficient.[375] The approved portion of the Arkansas Regional Haze SIP and our Regional Haze FIP together will ensure emissions reductions from Arkansas sources consistent with the assumptions used in the CENRAP modeling and meets Arkansas' obligations to address the interstate visibility transport requirement under section 110(a)(2)(D)(i)(II).

We address elsewhere in this document comments contending that there is uncertainty in the CALPUFF modeling and uncertainty that our proposed controls will result in actual visibility improvements.

VI. Final Action

We are finalizing a FIP to remedy the deficiencies in the Arkansas Regional Haze SIP and Interstate Visibility Transport SIP to address the visibility transport requirement under section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.

A. Regional Haze

Our final FIP includes SO_2, NO_X, and PM emission limits for specific emission units in Arkansas to address the BART requirements. The affected emission units are the AECC Bailey Unit 1; AECC McClellan Unit 1; AEP Flint Creek Unit 1; Entergy White Bluff Units 1, 2, and Auxiliary Boiler; Entergy Lake Catherine Unit 4; and Domtar Ashdown Mill Power Boilers No. 1 and 2. In addition, we are requiring SO_2 and NO_X controls under reasonable progress for Entergy Independence Units 1 and 2. We are also finalizing compliance schedules and testing, reporting and recordkeeping requirements for these emission units. Our final FIP requires the following emission limits for these emission units:

TABLE 22—FINAL BART EMISSION LIMITS

Unit	Final SO_2 emission limit	Final NO_X emission limit	Final PM emission limit
Bailey Unit 1	0.5% limit on sulfur content of fuel combusted.	887 lb/hr	0.5% limit on sulfur content of fuel combusted.
McClellan Unit 1	0.5% limit on sulfur content of fuel combusted.	869.1 lb/hr [a]/705.8 lb/hr [a]	0.5% limit on sulfur content of fuel combusted.
Flint Creek Unit 1	0.06 lb/MMBtu	0.23 lb/MMBtu	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
White Bluff Unit 1	0.06 lb/MMBtu	0.15 lb/MMBtu [b]/671 lb/hr [c]	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
White Bluff Unit 2	0.06 lb/MMBtu	0.15 lb/MMBtu [b]/671 lb/hr [c]	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
White Bluff Auxiliary Boiler	105.2 lb/hr	32.2 lb/hr	4.5 lb/hr.
Lake Catherine Unit 4 [d]	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).	0.22 lb/MMBtu	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
Domtar Ashdown Mill Power Boiler No. 1.	504 lb/day	207.4 lb/hr	EPA approved the state's BART determination in March 12, 2012 final action (77 FR 14604).
Domtar Ashdown Mill Power Boiler No. 2.	91.5 lb/hr	345 lb/hr	PM BART shall be satisfied by relying on the applicable PM standard under 40 CFR part 63, subpart DDDDD [e]

[a] Emission limit of 869.1 lb/hr applies to the natural gas-firing scenario; emission limit of 705.8 lb/hr applies to the fuel oil-firing scenario.

[b] Emission limit of 0.15 lb/MMBtu applies when unit is operated at 50% or greater of the unit's maximum heat input rating.

[c] Emission limit of 671 lb/hr applies when the unit is operated at less than 50% of the unit's maximum heat input rating.

[d] Emission limit for NO_X applies to the natural gas-firing scenario. The unit shall not burn fuel oil until BART determinations for SO_2, NO_X, and PM are promulgated for the unit for the fuel oil-firing scenario through EPA approval of a SIP revision or a FIP.

[e] The facility shall rely on the applicable PM standard under 40 CFR part 63, subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, as revised, to satisfy the PM BART requirement.

TABLE 23—FINAL REASONABLE PROGRESS EMISSION LIMITS FOR SOURCES NOT SUBJECT TO BART

Unit	Final SO_2 emission limit	Final NO_X emission limit
Independence Unit 1	0.06 lb/MMBtu	0.15 lb/MMBtu [a]/671 lb/hr [b]

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[374] See, *e.g.*, Colorado (76 FR 22036 (April 20, 2011)), Idaho (76 FR 36329 (June 22, 2011)), and New Mexico (76 FR 52388 (August, 22, 2011)).

[375] We've allowed states to rely on their approved regional haze plan to meet the requirements of the visibility component of 110(a)(2)(D)(i)(II) because the regional haze plan achieved at least as much emissions reductions as projected by the RPO modeling. See 76 FR 34608, June 14, 2011 (California); 79 FR 60985, October 9, 2014 (New Mexico); 76 FR 36329, June 22, 2011 (Idaho); and 76 FR 38997, July 5, 2011 (Oregon).

TABLE 23—FINAL REASONABLE PROGRESS EMISSION LIMITS FOR SOURCES NOT SUBJECT TO BART—Continued

Unit	Final SO_2 emission limit	Final NO_X emission limit
Independence Unit 2	0.06 lb/MMBtu	0.15 lb/MMBtu [a]/671 lb/hr [b]

[a] Emission limit of 0.15 lb/MMBtu applies when unit is operated at 50% or greater of the unit's maximum heat input rating.
[b] Emission limit of 671 lb/hr applies when the unit is operated at less than 50% of the unit's maximum heat input rating.

Based on our technical analysis, we have calculated the following RPGs for the 20% worst days for Arkansas' Class I areas:

TABLE 24—REASONABLE PROGRESS GOALS FOR 2018 FOR CANEY CREEK AND UPPER BUFFALO

Class I area	2018 RPG 20% Worst days (dv)
Caney Creek	22.47
Upper Buffalo	22.51

B. Interstate Visibility Transport

We are finalizing our determination that the control measures in the approved portion of the Arkansas Regional Haze SIP and our final FIP are sufficient to prevent Arkansas' emissions from interfering with other states' required measures to protect visibility. Thus, the combined measures from both plans satisfy the interstate transport visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone and the 1997 $PM_{2.5}$ NAAQS.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it imposes requirements that apply and are tailored to only six individual power plants (AECC Bailey; AECC McClellan; AEP Flint Creek; Entergy White Bluff; Entergy Lake Catherine; and Entergy Independence) and one paper mill in Arkansas (Domtar Ashdown Paper Mill). This FIP is not a rule of general applicability. Thus, it is not a "rule" or "regulation" within the meaning of E.O. 12866, and this action is not a "regulatory action" subject to 12866.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* Under the PRA, a "collection of information" is defined as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *" 44 U.S.C. 3502(3)(A). Because the FIP applies to only seven facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320.3(c).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This FIP will apply to seven facilities, none of which fall under the definition of small entities.

D. Unfunded Mandates Reform Act (UMRA)

EPA has determined that Title II of the UMRA does not apply to this rule. In 2 U.S.C. 1502(1) all terms in Title II of UMRA have the meanings set forth in 2 U.S.C. 658, which further provides that the terms "regulation" and "rule" have the meanings set forth in 5 U.S.C. 601(2). Under 5 U.S.C. 601(2), "the term 'rule' does not include a rule of particular applicability relating to . . . facilities." Because this rule is a rule of particular applicability relating to seven named facilities, EPA has determined that it is not a "rule" for the purposes of Title II of the UMRA.

E. Executive Order 13132: Federalism

This action does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The final rule does not impose significant economic costs on state or local governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action applies to seven facilities in Arkansas and to Federal Class I areas in Arkansas. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This action involves technical standards. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule would require the seven affected facilities to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This FIP limits emissions of SO_2, NO_X, and PM from seven facilities in Arkansas.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on October 27, 2016.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, regional haze, Best available retrofit technology.

Dated: August 31, 2016.

Gina McCarthy,

Administrator.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E—Arkansas

■ 2. Section 52.173 is amended by adding paragraphs (c) and (d) to read as follows:

§ 52.173 Visibility protection.

* * * * *

(c) *Federal implementation plan for regional haze.* Requirements for AECC Carl E. Bailey Unit 1; AECC John L. McClellan Unit 1; AEP Flint Creek Unit 1; Entergy White Bluff Units 1, 2, and Auxiliary Boiler; Entergy Lake Catherine Unit 4; Domtar Ashdown Paper Mill Power Boilers No. 1 and 2; and Entergy Independence Units 1 and 2 affecting visibility.

(1) *Applicability.* The provisions of this section shall apply to each owner or operator, or successive owners or operators, of the sources designated as: AECC Carl E. Bailey Unit 1; AECC John L. McClellan Unit 1; AEP Flint Creek Unit 1; Entergy White Bluff Units 1, 2, and Auxiliary Boiler; Entergy Lake Catherine Unit 4; Domtar Ashdown Paper Mill Power Boilers No. 1 and 2; and Entergy Independence Units 1 and 2.

(2) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the Clean Air Act and in parts 51 and 60 of this title. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes selective catalytic control units, baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

Boiler-operating-day for electric generating units listed under paragraph (c)(1) of this section means any 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit, unless otherwise specified. For power boilers listed under paragraph (c)(1) of this section, we define boiler-operating-day as a 24-hr period between 6 a.m. and 6 a.m. the following day during which any fuel is fed into and/or combusted at any time in the power boiler.

Daily average means the arithmetic average of the hourly values measured in a 24-hour period.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises any of the units or power boilers listed under paragraph (c)(1) of this section.

Regional Administrator means the Regional Administrator of EPA Region 6 or his/her authorized representative.

Unit means one of the natural gas, fuel oil, or coal fired boilers covered under paragraph (c) of this section.

(3) *Emissions limitations for AECC Bailey Unit 1 and AECC McClellan Unit 1.* The individual SO_2, NO_X, and PM emission limits for each unit are as listed in the following table.

Unit	SO_2 Emission limit	NO_X Emission limit	PM Emission limit
AECC Bailey Unit 1	Use of fuel with a sulfur content limit of 0.5% by weight..	887 lb/hr	Use of fuel with a sulfur content limit of 0.5% by weight.
AECC McClellan Unit 1	Use of fuel with a sulfur content limit of 0.5% by weight..	869.1 lb/hr (Natural Gas firing) 705.8 lb/hr (Fuel Oil firing)	Use of fuel with a sulfur content limit of 0.5% by weight.

(4) *Compliance dates for AECC Bailey Unit 1 and AECC McClellan Unit.* The owner or operator of each unit must comply with the SO_2 and PM requirements listed in paragraph (c)(3) of this section by October 27, 2021. As of October 27, 2016, the owner or operator of each unit shall not purchase fuel for combustion at the unit that does not meet the sulfur content limit in paragraph (c)(3) of this section. The owner or operator of each unit must comply with the requirement in paragraph (c)(3) of this section to burn only fuel with a sulfur content limit of 0.5% by weight by October 27, 2021. The owner or operator of each unit must comply with the NO_X emission limits in paragraph (c)(3) of this section by October 27, 2016.

(5) *Compliance determination and reporting and recordkeeping requirements for AECC Bailey Unit 1 and AECC McClellan Unit*—(i) *SO_2 and PM.* To determine compliance with the SO_2 and PM requirements listed in paragraph (c)(3) of this section, the owner or operator shall sample and analyze each shipment of fuel to determine the sulfur content by weight, except for natural gas shipments. A "shipment" is considered delivery of the entire amount of each order of fuel purchased. Fuel sampling and analysis may be performed by the owner or operator of an affected unit, an outside laboratory, or a fuel supplier. All records pertaining to the sampling of each shipment of fuel as described above, including the results of the sulfur content analysis, must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives.

(ii) *NO_X.* To determine compliance with the NO_X emission limits of paragraph (c)(3) of this section, the owner or operator shall determine the average concentration (arithmetic average of three contiguous one hour periods) of NO_X as measured by the CEMS and converted to pounds per hour using corresponding average (arithmetic average of three contiguous one hour periods) stack gas flow rates. Records of the NO_X emissions rates must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives.

(iii) The owner or operator shall continue to maintain and operate a CEMS for NO_X on the units listed in paragraph (c)(3) of this section in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for NO_X shall be determined by using data from a CEMS.

(iv) Continuous emissions monitoring shall apply during all periods of operation of the units listed in paragraph (c)(3) of this section, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring NO_X and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid NO_X pounds per hour emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24-hour period and at least 22 out of 30 successive boiler operating days.

(6) *Emissions limitations for AEP Flint Creek Unit 1 and Entergy White Bluff Units 1 and 2.* The individual SO_2 and NO_X emission limits for each unit are as listed in the following table, as specified in pounds per million British thermal units (lb/MMBtu) or pounds per hour (lb/hr). The SO_2 emission limits of 0.06 lb/MMBtu and the NO_X emission limits of 0.23 lb/MMBtu and 0.15 lb/MMBtu are on a rolling 30 boiler-operating-day averaging period. The NO_X emission limit of 671 lb/hr is on a rolling 3-hour average.

Unit	SO_2 Emission limit (lb/MMBtu)	NO_X Emission limit (lb/MMBtu)	NO_X Emission limit (lb/hr)
AEP Flint Creek Unit 1	0.06	0.23	
Entergy White Bluff Unit 1	0.06	0.15	671
Entergy White Bluff Unit 2	0.06	0.15	671

(7) *Compliance dates for AEP Flint Creek Unit 1 and Entergy White Bluff Units 1 and 2.* The owner or operator of AEP Flint Creek Unit 1 must comply with the SO_2 and NO_X emission limits listed in paragraph (c)(6) of this section by April 27, 2018. The owner or operator of White Bluff Units 1 and 2 must comply with the SO_2 emission limit listed in paragraph (c)(6) of this section by October 27, 2021, and must comply with the NO_X emission limits listed in paragraph (c) (6) of this section by April 27, 2018.

(8) *Compliance determination and reporting and recordkeeping requirements for AEP Flint Creek Unit 1 and Entergy White Bluff Units 1 and 2.* (i) For purposes of determining compliance with the SO_2 and NO_X emissions limits listed in paragraph

(c)(6) of this section for AEP Flint Creek Unit 1 and with the SO_2 emissions limit listed in paragraph (c)(6) of this section for White Bluff Units 1 and 2, the emissions for each boiler-operating-day for each unit shall be determined by summing the hourly emissions measured in pounds of SO_2 or pounds of NO_X. For each unit, heat input for each boiler-operating-day shall be determined by adding together all hourly heat inputs, in millions of BTU. Each boiler-operating-day of the 30-day rolling average for a unit shall be determined by adding together the pounds of SO_2 or NO_X from that day and the preceding 29 boiler-operating-days and dividing the total pounds of SO_2 or NO_X by the sum of the heat input during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/MMBtu emissions of SO_2 or NO_X. If a valid SO_2 or NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and SO_2 or NO_X pounds per hour shall not be used in the calculation of the 30 boiler-operating-day rolling average for SO_2 or NO_X. For each day, records of the total SO_2 and NO_X emitted that day by each emission unit and the sum of the hourly heat inputs for that day must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the 30 boiler-operating-day rolling average for SO_2 and NO_X for each unit as described above must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives.

(ii) For purposes of determining compliance with the 0.15 lb/MMBtu NO_X emissions limit listed in paragraph (c)(6) of this section for White Bluff Units 1 and 2, the NO_X emissions for each unit shall be determined by the following procedure:

(A) Summing the total pounds of NO_X emitted during the current boiler-operating-day and the preceding 29 boiler-operating-days while including only emissions during hours when the unit was dispatched at 50% or greater of the unit's maximum heat input rating;

(B) Summing the total heat input in MMBtu to the unit during the current boiler-operating-day and the preceding 29 boiler-operating-days while including only the heat input during hours when the unit was dispatched at 50% or greater of the unit's maximum heat input rating; and

(C) Dividing the total pounds of NO_X emitted as calculated in step 1 by the total heat input to the unit as calculated in step 2. The result shall be the 30 boiler-operating-day rolling average in terms of lb/MMBtu emissions of NO_X. If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the 30 boiler-operating-day rolling average for NO_X. For each day, records for each unit of the hours during which the unit was dispatched at 50% or greater of the unit's maximum heat input rating, as well as NO_X emissions and hourly heat input for each of those hours must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the 30 boiler-operating-day rolling average for NO_X for each unit as described above must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives.

(iii) For purposes of determining compliance with the 671 lb/hr NO_X emissions limit listed in paragraph (c)(6) of this section for White Bluff Units 1 and 2, the NO_X emissions for each unit shall be determined by the following procedure:

(A) Summing the total pounds of NO_X emitted during the current hour and the preceding 2 hours during which the unit was dispatched at less than 50% of the unit's maximum heat input rating; and

(B) Dividing the total pounds of NO_X emitted as calculated in step 1 by 3. The result shall be the rolling 3-hour average in terms of lb/hr emissions of NO_X. If a valid NO_X pounds per hour is not available for any hour for a unit, that NO_X pounds per hour shall not be used in the calculation of the rolling 3-hour average for NO_X. For each day, records for each unit of the hours during which the unit was dispatched at less than 50% of each unit's maximum heat input rating, as well as NO_X emissions and hourly heat input for each of those hours must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the rolling 3-hour averages for NO_X for each unit as described above must be maintained for each day by the owner or operator and made available upon request to EPA and ADEQ representatives.

(iv) The owner or operator shall continue to maintain and operate a CEMS for SO_2 and NO_X on the units listed in paragraph (c)(6) of this section in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for SO_2 and NO_X shall be determined by using data from a CEMS.

(v) Continuous emissions monitoring shall apply during all periods of operation of the units listed in paragraph (c)(6) of this section, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2 and NO_X and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 or NO_X pounds per hour emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive boiler operating days.

(9) *Emissions limitations for Entergy White Bluff Auxiliary Boiler.* The individual SO_2, NO_X, and PM emission limits for the unit are as listed in the following table in pounds per hour (lb/hr).

Unit	SO_2 Emission limit (lb/hr)	NO_X Emission limit (lb/hr)	PM Emission limit (lb/hr)
Entergy White Bluff Auxiliary Boiler	105.2	32.2	4.5

(10) *Compliance dates for Entergy White Bluff Auxiliary Boiler.* The owner or operator of the unit must comply with the SO_2, NO_X, and PM emission limits listed in paragraph (c)(9) of this section by October 27, 2016.

(11) *Compliance determination and reporting and recordkeeping requirements for Entergy White Bluff Auxiliary Boiler.* For purposes of demonstrating compliance with the emission limits listed in paragraph (c)(9) of this section, records of fuel oil analysis must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives.

(12) *Emissions limitations for Entergy Lake Catherine Unit 4.* The individual NO_X emission limit for the unit for natural gas firing is as listed in the following table in pounds per million British thermal units (lb/MMBtu) as averaged over a rolling 30 boiler-operating-day period. The unit must not burn fuel oil until BART determinations are promulgated for the unit for SO_2, NO_X, and PM for the fuel oil firing scenario through a FIP and/or through EPA action upon and approval of revised BART determinations submitted by the State as a SIP revision.

Unit	NO_X Emission limit—natural gas firing (lb/MMBtu)
Entergy Lake Catherine Unit 4	0.22

(13) *Compliance dates for Entergy Lake Catherine Unit 4.* The owner or operator of the unit must comply with the NO_X emission limit listed in paragraph (c)(12) of this section by October 27, 2019.

(14) *Compliance determination and reporting and recordkeeping requirements for Entergy Lake Catherine Unit 4.* (i) NO_X emissions for each day shall be determined by summing the hourly emissions measured in pounds of NO_X. The heat input for each boiler-operating-day shall be determined by adding together all hourly heat inputs, in millions of BTU. Each boiler-operating-day of the thirty-day rolling average for the unit shall be determined by adding together the pounds of NO_X from that day and the preceding 29 boiler-operating-days and dividing the total pounds of NO_X by the sum of the heat input during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/MMBtu emissions of NO_X. If a valid NO_X pounds per hour or heat input is not available for any hour for the unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the 30 boiler-operating-day rolling average for NO_X. For each day, records of the total NO_X emitted that day by the unit and the sum of the hourly heat inputs for that day must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the 30 boiler-operating-day rolling average for NO_X for the unit as described above must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives.

(ii) The owner or operator shall continue to maintain and operate a CEMS on the unit listed in paragraph (c)(12) of this section in accordance with 40 CFR part 75, Appendix E as long as the unit meets the definition of a peaking unit under 40 CFR part 75. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75.

(iii) Continuous emissions monitoring shall apply during all periods of operation of the unit listed in paragraph (c)(12) of this section, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments.

(15) *Emissions Limitations for Domtar Ashdown Paper Mill Power Boiler No. 1.* The SO_2 emission limit for the boiler is as listed in the following table in pounds per day (lb/day) as averaged over a rolling 30 boiler-operating-day period. The NO_X emission limit for the boiler is as listed in the following table in pounds per hour (lb/hr).

Unit	SO_2 Emission limit (lb/day)	NO_X Emission limit (lb/hr)
Domtar Ashdown Paper Mill Power Boiler No. 1	504	207.4

(16) *Compliance dates for Domtar Ashdown Mill Power Boiler No. 1.* The owner or operator of the boiler must comply with the SO_2 and NO_X emission limits listed in paragraph (c)(15) of this section by November 28, 2016.

(17) *Compliance determination and reporting and recordkeeping requirements for Domtar Ashdown Paper Mill Power Boiler No. 1.* (i)(A) SO_2 emissions resulting from combustion of fuel oil shall be determined by assuming that the SO_2 content of the fuel delivered to the fuel inlet of the combustion chamber is equal to the SO_2 being emitted at the stack. The owner or operator must maintain records of the sulfur content by weight of each fuel oil shipment, where a "shipment" is considered delivery of the entire amount of each order of fuel purchased. Fuel sampling and analysis may be performed by the owner or operator, an outside laboratory, or a fuel supplier. All records pertaining to the sampling of each shipment of fuel oil, including the results of the sulfur content analysis, must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. SO_2 emissions resulting from combustion of bark shall be determined by using the following site-specific curve equation, which accounts for the SO_2 scrubbing capabilities of bark combustion:

$$Y = 0.4005 * X - 0.2645$$

Where:

Y= pounds of sulfur emitted per ton of dry fuel feed to the boiler
X= pounds of sulfur input per ton of dry bark

(B) The owner or operator must confirm the site-specific curve equation through stack testing. By October 27, 2017, the owner or operator must provide a report to EPA showing confirmation of the site specific-curve equation accuracy. Records of the quantity of fuel input to the boiler for each fuel type for each day must be compiled no later than 15 days after the end of the month and must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Each boiler-operating-day of the 30-day rolling average for the boiler must be determined by adding together the pounds of SO_2 from that boiler-operating-day and the preceding 29 boiler-operating-days and dividing the total pounds of SO_2 by the sum of the total number of boiler operating days (*i.e.*, 30). The result shall be the 30 boiler-operating-day rolling average in terms of lb/day emissions of SO_2. Records of the total SO_2 emitted for each day must be compiled no later than 15 days after the end of the month and must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the 30 boiler-operating-day rolling averages for SO_2 as described in this paragraph (c)(17)(i) must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives.

(ii) If the air permit is revised such that Power Boiler No. 1 is permitted to burn only pipeline quality natural gas, this is sufficient to demonstrate that the boiler is complying with the SO_2 emission limit under paragraph (c)(15) of this section. The compliance determination requirements and the reporting and recordkeeping requirements under paragraph (c)(17)(i) of this section would not apply and confirmation of the accuracy of the site-specific curve equation under paragraph (c)(17)(i)(B) of this section through stack testing would not be required so long as Power Boiler No. 1 is only permitted to burn pipeline quality natural gas.

(iii) To demonstrate compliance with the NO_X emission limit under paragraph (c)(15) of this section, the owner or operator shall conduct stack testing using EPA Reference Method 7E once every 5 years, beginning 1 year from the effective date of our final rule. Records and reports pertaining to the stack testing must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives.

(iv) If the air permit is revised such that Power Boiler No. 1 is permitted to burn only pipeline quality natural gas, the owner or operator may demonstrate compliance with the NO_X emission limit under paragraph (c)(15) of this section by calculating NO_X emissions using fuel usage records and the applicable NO_X emission factor under AP–42, Compilation of Air Pollutant Emission Factors, section 1.4, Table 1.4–1. Records of the quantity of natural gas input to the boiler for each day must be compiled no later than 15 days after the end of the month and must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the calculation of NO_X emissions for each day must be compiled no later than 15 days after the end of the month and must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Each boiler-operating-day of the 30-day rolling average for the boiler must be determined by adding together the pounds of NO_X from that day and the preceding 29 boiler-operating-days and dividing the total pounds of NO_X by the sum of the total number of hours during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/hr emissions of NO_X. Records of the 30 boiler-operating-day rolling average for NO_X must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives. Under these circumstances, the compliance determination requirements and the reporting and recordkeeping requirements under paragraph (c)(17)(iii) of this section would not apply.

(18) *SO_2 and NO_X Emissions Limitations for Domtar Ashdown Paper Mill Power Boiler No.2.* The individual SO_2 and NO_X emission limits for the boiler are as listed in the following table in pounds per hour (lb/hr) as averaged over a rolling 30 boiler-operating-day period.

Unit	SO_2 Emission Limit (lb/hr)	NO_X Emission Limit (lb/hr)
Domtar Ashdown Paper Mill Power Boiler No. 2	91.5	345

(19) *SO_2 and NO_X Compliance dates for Domtar Ashdown Mill Power Boiler No. 2.* The owner or operator of the boiler must comply with the SO_2 and NO_X emission limits listed in paragraph (c)(18) of this section by October 27, 2021.

(20) *SO_2 and NO_X Compliance determination and reporting and recordkeeping requirements for Domtar Ashdown Mill Power Boiler No. 2.* (i) NO_X and SO_2 emissions for each day shall be determined by summing the hourly emissions measured in pounds of NO_X or pounds of SO_2. Each boiler-operating-day of the 30-day rolling average for the boiler shall be determined by adding together the pounds of NO_X or SO_2 from that day and the preceding 29 boiler-operating-days and dividing the total pounds of NO_X or SO_2 by the sum of the total number of hours during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/hr emissions of NO_X or SO_2. If a valid NO_X pounds per hour or SO_2 pounds per hour is not available for any hour for the boiler, that NO_X pounds per hour shall not be used in the calculation of the 30 boiler-operating-day rolling average for NO_X. For each day, records of the total SO_2 and NO_X emitted for that day by the boiler must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the 30 boiler-operating-day rolling average for SO_2 and NO_X for the boiler as described above must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives.

(ii) The owner or operator shall continue to maintain and operate a CEMS for SO_2 and NO_X on the boiler listed in paragraph (c)(18) of this section in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 60. Compliance with the emission limits for SO_2 and NO_X shall be determined by using data from a CEMS.

(iii) Continuous emissions monitoring shall apply during all periods of operation of the boiler listed in paragraph (c)(18) of this section, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2 and NO_X and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 or NO_X pounds per hour emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive boiler operating days.

(iv) If the air permit is revised such that Power Boiler No. 2 is permitted to burn only pipeline quality natural gas, this is sufficient to demonstrate that the boiler is complying with the SO_2 emission limit under paragraph (c)(18) of this section. Under these circumstances, the compliance determination requirements under paragraphs (c)(20)(i) through (iii) of this section would not apply to the SO_2 emission limit listed in paragraph (c)(18) of this section.

(v) If the air permit is revised such that Power Boiler No. 2 is permitted to burn only pipeline quality natural gas and the operation of the CEMS is not required under other applicable requirements, the owner or operator may demonstrate compliance with the NO_X emission limit under paragraph (c)(18) of this section by calculating NO_X emissions using fuel usage records and the applicable NO_X emission factor under AP–42, Compilation of Air Pollutant Emission Factors, section 1.4, Table 1.4–1. Records of the quantity of natural gas input to the boiler for each day must be compiled no later than 15 days after the end of the month and must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the calculation of NO_X emissions for each day must be compiled no later than 15 days after the end of the month and must be maintained and made available upon request to EPA and ADEQ representatives. Each boiler-operating-day of the 30-day rolling average for the boiler must be determined by adding together the pounds of NO_X from that day and the preceding 29 boiler-operating-days and dividing the total pounds of NO_X by the sum of the total number of hours during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/hr emissions of NO_X. Records of the 30 boiler-operating-day rolling average for NO_X must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives. Under these circumstances, the compliance determination requirements under paragraphs (c)(20)(i) through (iii) of this section would not apply to the NO_X emission limit.

(21) *PM BART Requirements for Domtar Ashdown Paper Mill Power Boiler No.2.* The owner or operator must rely on the applicable PM standard required under 40 CFR part 63, subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, as revised, to satisfy the PM BART requirement. Compliance with the applicable PM standard under 40 CFR part 63 subpart DDDDD, as revised, shall demonstrate compliance with the PM BART requirement.

(22) *PM compliance dates for Domtar Ashdown Mill Power Boiler No. 2.* The owner or operator of the boiler must comply with the PM BART requirement listed in paragraph (c)(21) of this section by November 28, 2016.

(23) Alternative *PM Compliance Determination for Domtar Ashdown Paper Mill Power Boiler No.2.* If the air permit is revised such that Power Boiler No. 2 is permitted to burn only pipeline quality natural gas, this is sufficient to demonstrate that the boiler is complying with the PM BART requirement under paragraph (c)(21) of this section.

(24) *Emissions limitations for Entergy Independence Units 1 and 2.* The individual emission limits for each unit are as listed in the following table in pounds per million British thermal units (lb/MMBtu) or pounds per hour (lb/hr). The SO_2 emission limit and the NO_X emission limits listed in the table as lb/MMBtu are on a rolling 30 boiler-operating-day averaging period. The NO_X emission limit of 671 lb/hr is on a rolling 3-hour average.

Unit	SO_2 Emission limit (lb/MMBtu)	NO_X Emission limit (lb/MMBtu)	NO_X Emission Limit (lb/hr)
Entergy Independence Unit 1	0.06	0.15	671
Entergy Independence Unit 2	0.06	0.15	671

(25) *Compliance dates for Entergy Independence Units 1 and 2.* The owner or operator of each unit must comply with the SO_2 emission limit in paragraph (c)(24) of this section by October 27, 2021 and with the NO_X emission limits by April 27, 2018.

(26) *Compliance determination and reporting and recordkeeping requirements for Entergy Independence Units 1 and 2.* (i) For purposes of determining compliance with the SO_2 emissions limit listed in paragraph (c)(24) of this section for each unit, the SO_2 emissions for each boiler-operating-day shall be determined by summing the hourly emissions measured in pounds of SO_2. For each unit, heat input for each boiler-operating-day shall be determined by adding together all hourly heat inputs, in millions of BTU. Each boiler-operating-day of the thirty-day rolling average for a unit shall be determined by adding together the pounds of SO_2 from that day and the preceding 29 boiler-operating-days and dividing the total pounds of SO_2 by the sum of the heat input during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/MMBtu emissions of SO_2. If a valid SO_2 pounds per hour or heat input is not available for any hour for a unit, that heat input and SO_2 pounds per hour shall not be used in the calculation of the applicable 30 boiler-operating-days rolling average. For each day, records of the total SO_2 emitted that day by each emission unit and the sum of the hourly heat inputs for that day must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. . Records of the 30 boiler-operating-day rolling average for each unit as described above must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives.

(ii) For purposes of determining compliance with the 0.15 lb/MMBtu NO_X emissions limit listed in paragraph (c)(24), the NO_X emissions for each unit shall be determined by the following procedure:

(A) Summing the total pounds of NO_X emitted during the current boiler-operating-day and the preceding 29 boiler-operating-days while including only emissions during hours when the unit was dispatched at 50% or greater of the unit's maximum heat input rating;

(B) Summing the total heat input in MMBtu to the unit during the current boiler-operating-day and the preceding 29 boiler operating days while including only the heat input during hours when the unit was dispatched at 50% or greater of the unit's maximum heat input rating; and

(C) Dividing the total pounds of NO_X emitted as calculated in step 1 by the total heat input to the unit as calculated in step 2. The result shall be the 30 boiler-operating-day rolling average in terms of lb/MMBtu emissions of NO_X. If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the 30 boiler-operating-day rolling average for NO_X. For each day, records for each unit of the hours during which the unit was dispatched at 50% or greater of the unit's maximum heat input rating, as well as NO_X emissions and hourly heat input for each of those hours must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the 30 boiler-operating-day rolling average for NO_X for each unit as described above must be maintained by the owner or operator for each boiler-operating-day and made available upon request to EPA and ADEQ representatives.

(iii) For purposes of determining compliance with the 671 lb/hr NO_X emissions limit listed in paragraph (c)(24), the NO_X emissions for each unit shall be determined by the following procedure:

(A) Summing the total pounds of NO_X emitted during the current hour and the preceding 2 hours during which the unit was dispatched at less than 50% of the unit's maximum heat input rating; and

(B) Dividing the total pounds of NO_X emitted as calculated in step 1 by 3. The result shall be the rolling 3-hour average in terms of lb/hr emissions of NO_X. If a valid NO_X pounds per hour is not available for any hour for a unit, that NO_X pounds per hour shall not be used in the calculation of the rolling 3-hour average for NO_X. For each day, records for each unit of the hours during which the unit was dispatched at less than 50% of each unit's maximum heat input rating, as well as NO_X emissions and hourly heat input for each of those hours must be maintained by the owner or operator and made available upon request to EPA and ADEQ representatives. Records of the rolling 3-hour averages for NO_X for each unit as described above must be maintained for each day by the owner or operator and made available upon request to EPA and ADEQ representatives.

(iv) The owner or operator shall continue to maintain and operate a CEMS for SO_2 and NO_X on the units listed in paragraph (c)(24) in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for SO_2 and NO_X shall be determined by using data from a CEMS.

(v) Continuous emissions monitoring shall apply during all periods of operation of the units listed in paragraph (c)(24) of this section, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2 and NO_X and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 or NO_X pounds per hour emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive boiler operating days.

(27) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required under paragraph (c) of this section shall be submitted, unless instructed otherwise, to the Director, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, to the attention of Mail Code: 6PD, at 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. For each unit subject to the emissions limitation under paragraph (c) of this section, the owner or operator shall comply with the following requirements, unless otherwise specified:

(i) For each emissions limit under paragraph (c) of this section where compliance shall be determined by using data from a CEMS, comply with the notification, reporting, and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d).

(ii) [Reserved]

(28) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(29) *Enforcement.* (i) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(ii) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

(d) *Measures Addressing Partial Disapproval of Portion of Interstate Visibility Transport SIP for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.* The deficiencies identified in EPA's partial disapproval of the portion of the SIP pertaining to adequate provisions to prohibit emissions in Arkansas from interfering with measures required in another state to protect visibility, submitted on March 28, 2008, and supplemented on September 27, 2011 are satisfied by § 52.173.

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Part III

Department of Defense

Office of the Secretary

32 CFR Part 105
Sexual Assault Prevention and Response (SAPR) Program Procedures; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2008–OS–0100; 0790–AI36]

32 CFR Part 105

Sexual Assault Prevention and Response (SAPR) Program Procedures

AGENCY: Department of Defense (DoD).

ACTION: Interim final rule; amendment.

SUMMARY: This rule contains amendments to an interim final rule published in the **Federal Register** on April 11, 2013, which provided guidance and procedures for the SAPR Program. This included establishing the processes and procedures for the Sexual Assault Forensic Examination (SAFE) Kit; establishing the multidisciplinary Case Management Group (CMG), providing guidance on how to handle sexual assault; and establishing minimum program standards, training requirements, and requirements for the DoD Annual Report on Sexual Assault in the Military. This rule adds amendments from the National Defense Authorization Act (NDAA) for Fiscal Year 2016, which contains a provision that preempts state laws that require disclosure of personally identifiable information (PII) of the adult sexual assault victim or alleged perpetrator to local or state law enforcement. This interim final rule implements this provision with respect to care sought at DoD Installations.

DATES: *Effective Date:* This rule is effective September 27, 2016. Comments must be received by November 28, 2016.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Diana Rangoussis, Senior Policy Advisor, DoD Sexual Assault Prevention and Response Office (SAPRO), (571) 372–2648.

SUPPLEMENTARY INFORMATION:

Summary of the Major Amendments to the Final Rule

This rule amends the interim final rule published in the **Federal Register** on April 11, 2013 (78 FR 21716–21747) by:

(a) Incorporating Secretary of Defense policy initiatives in furtherance of the Department's continuous goal to eliminate sexual assault through the focus efforts of leadership to include:

- CMG Chair inquiry into incidents of retaliation involving the victim, witnesses, bystanders (who intervened), SARC, SAPR VA, or responders;
- Specialized training for all supervisors (officer, enlisted, civilian) that explain requirement to protect victim from retaliation, reprisal, ostracism, and maltreatment; what constitutes retaliation, reprisal, ostracism, and maltreatment; list of resources available for victims to report instances of retaliation, reprisal, ostracism, or maltreatment.

(b) Incorporating NDAA FY14 requirements for updated SAPR training standards for Service members, which include specific standards for: Accessions, annual, professional military education and leadership development training, pre- and post-deployment, pre-command, General and Field Officers and SES, military recruiters, civilians who supervise military, and responders (to include legal assistance attorneys) training;

(c) Incorporating NDAA FY15 requirement for training on the new military rule of evidence (MRE) 513 that established the victim advocate privilege in UCMJ cases;

(d) Establishing requirements for a sexual assault victim safety assessment and the execution of a high-risk team to monitor cases where the sexual assault victim's life and safety may be in jeopardy;

(e) Elevating SAPR oversight to senior leadership through an eight-day incident report in response to Unrestricted Report of sexual assault;

(f) Establishing a special victim capability to provide legal representation to victims of sexual assault;

(g) Incorporating NDAA FY13 requirements to retain or recall to active duty reserve component members who are victims of sexual assault while on active duty;

(h) Requiring the Department of Defense to establish a record on the disposition of any Unrestricted Report of sexual assault;

(i) Incorporating NDAA requirement to post and widely disseminate SAPR information available to report and respond, including hotline and Internet Web sites;

(j) Requiring that commanders conduct a command assessment within 120 days of assumption of command;

(k) Establishing requirement for a general or flag officer review of and concurrence in the separation of a victim of sexual assault making an Unrestricted Report from the Armed Forces;

(l) Providing notification to Armed Forces members completing Standard Form 86 of the Questionnaire for National Security Positions the ability to answer "no" to question 21 if the individual is a victim of sexual assault and consultation occurred strictly in relation to the sexual assault.

(m) Preempting state and local laws requiring disclosure of PII of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official.

Interim Final Rule Justification

The Department of Defense is publishing this rule as interim to maintain and enhance the current SAPR program which elucidates the prevention, response, and oversight of sexual assaults involving members of the U.S. Armed Forces and Reserve Component, to include the National Guard.

Until this interim final rule is published, DoD is limited in its ability to properly address issues associated with sexual assault such as minimal leadership involvement, hostile command environment, retaliation, ostracism, and maltreatment.

For example, until this rule is published:

- Sexual assault victims do not have the ability to receive legal assistance from Special Victims Counsel (SVC) and Victims' Legal Counsel (VLC).
- Victims of sexual assault regardless of their geographic location will not have the option of a restricted report. This reporting option allows victims to confidentially disclose the assault to specified individuals (*i.e.,* Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention and Response Victim Advocate (SAPR VA),

or healthcare personnel), receive medical treatment, including emergency care, counseling, and be assigned a SARC and SAPR VA, without triggering an official investigation.

- State and local laws are not preempted and would require disclosure of PII of the service member (or adult military dependent), a victim or the alleged perpetrator.
- Military members who are sexually assaulted cannot receive the ability to request an Expedited Transfer as a means to getting a 'fresh start' to support the victim's recovery.
- Reserve Component and National Guard members who are victims of sexual assault will not receive the same SAPR advocacy regardless of when the sexual assault incident occurred, similar to the advocate support afforded their active duty counterparts.

Background

The authorities for this rule are based on the following:

(1) Incorporates all applicable congressional mandates from Public Laws 112–239, 113–66, 113–291, 114–92 and all applicable policy guidance from the IG, DoD; GAO; DoD Task Force on Care for Victims of Sexual Assault; and Defense Task Force on Sexual Assault in the Military Service (DTFSAMS);

(2) Establishes the creation, implementation, maintenance, and function of DSAID, an integrated database that will meet congressional reporting requirements, support Service SAPR program management, and inform DoD SAPRO oversight activities;

(3) Increases the scope of applicability of this part by expanding the categories of persons covered by this part to include:

(i) National Guard (NG) and Reserve Component members who are sexually assaulted when performing active service, as defined in 10 U.S.C. 101(d)(3), and inactive duty training. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, NG and Reserve Component members will be eligible to receive timely access to SAPR advocacy services from a Sexual Assault Response Coordinator (SARC) and a SAPR Victim Advocate (SAPR VA). They also have access to a Special Victim Counsel and are eligible to file a Restricted or Unrestricted Report. Additionally, the Reserve Component members can report at any time and do not have to wait to be performing active service or be in inactive training to file their report.

(ii) Military dependents 18 years of age and older who are eligible for treatment in the military healthcare system (MHS), at installations in the continental United States (CONUS) and outside the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner.

(iii) Adult military dependents who may file unrestricted or restricted reports of sexual assault.

(iv) The Family Advocacy Program (FAP), consistent with DoDD 6400.1 [1] and DoD Instruction (DoDI) 6400.06,[2] which covers adult military dependent sexual assault victims who are assaulted by a spouse or intimate partner and military dependent sexual assault victims who are 17 years of age and younger.)

(4) Non-military individuals who are victims of sexual assault who are only eligible for limited emergency care medical services at a military treatment facility, unless that individual is otherwise eligible as a Service member or TRICARE (*http://www.tricare.mil*) beneficiary of the military health system to receive treatment in a military medical treatment facility (MTF) at no cost to them. They are only eligible to file an Unrestricted Report. They will also be offered the limited SAPR services to be defined as the assistance of a SARC and SAPR VA while undergoing emergency care OCONUS. These limited medical and SAPR services shall be provided to:

(i) DoD civilian employees and their family dependents 18 years of age and older when they are stationed or performing duties OCONUS and eligible for treatment in the MHS at military installations or facilities OCONUS. These DoD civilian employees and their family dependents 18 years of age and older only have the Unrestricted Reporting option.

(ii) U.S. citizen DoD contractor personnel when they are authorized to accompany the Armed Forces in a contingency operation OCONUS and their U.S. citizen employees. DoD contractor personnel only have the Unrestricted Reporting option. Additional medical services may be provided to contractors covered under this part in accordance with DoDI 3020.41 [3] as applicable.

(5) Service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning are eligible to receive SAPR services under either reporting option. The DoD shall provide support to an active duty Service member regardless of when or where the sexual assault took place.

Authority:

The authorities for these changes are provided by the following.

- Public Law 114–92, National Defense Authorization Act for Fiscal Year 2016 which preempts state and local laws requiring disclosure of PII of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official.
- Public Law 113–291, Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 which provides

—Access of Special Victims' Counsel to member of Reserve and National Guard.
—Modification of DoD policy on retention of evidence in a sexual assault case whereby victim's property returned upon completion of related proceedings.
—Modification of Military Rules of Evidence 513 whereby victim-psychotherapist privilege extended to other mental health providers.
—Analysis and assessment of disposition of most serious offenses identified in Unrestricted Reports on the Annual Report on Sexual Assaults in the Armed Forces.
—Limited use of certain information on sexual assaults in Restricted Reports by military criminal investigative organizations.

- Public Law 112–239, National Defense Authorization Act for Fiscal Year 2013 which

—Establishes special victim capabilities within DoD to respond to allegations of certain special victim offenses.
—Enhances training and education for sexual assault prevention and response: commander training and 14-day notice of SAPR program to new Service members.
—Creates or Authorities Armed Forces Workplace and Gender Relations Surveys.
—Requires General or Flag officer review of a member of the Armed Forces separation after making an Unrestricted Report of sexual assault.

- Public Law 113–66, National Defense Authorization Act for Fiscal Year 2014 which

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[1] Available: *http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf*.

[2] Available: *http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf*.

[3] Available: *http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf*.

—Prohibits retaliation against members of the Armed Forces for reporting a criminal offense.

—Requires temporary administrative reassignment or removal of alleged offender.

—Requires retention of forms in connection with Restricted Reports for 50 years.

—Elevates oversight to senior leadership through an eight-day incident report in response to an Unrestricted Report in which the victim is a member of the Armed Forces.

—Requires discharge or dismissal for certain sex-related offenses and trial of such offenses by general courts-martial.

—Requires notification to members of the Armed Forces the ability to answer "no" to question #21 when completing Standard Form 86 of the Questionnaire for National Security Positions when consultation occurred strictly in relation to the sexual assault.

III. Costs and Benefits

For Fiscal Year 2015, the preliminary estimate of the anticipated costs associated with this rule is approximately $15 million. Additionally, each Military Services must establish its own SAPR budget for the programmatic costs arising from the implementation of the training, prevention, reporting, response, and oversight requirements established by this rule.

The anticipated benefits associated with this rule include the following.

(1) Requires medical care and SAPR services be gender responsive, trauma informed, culturally competent and recovery oriented. This includes requirements to assign at least one full-time sexual assault medical forensic examiner to each military treatment facility with an 24-hour emergency department.

(2) Requires both Unrestricted and Restricted Reports to be retained for 50 years to preserve the historical record of a sexual assault victims case for future claims for support or medical services.

(3) Allows a commander authority to temporarily reassign or remove subject from current assignment for the purposes of maintaining good order and discipline.

(4) Protects Military Service members who file Unrestricted or Restricted Reports of sexual assault from reprisal, or threat of reprisal, for filing a report.

(5) Expands the applicability of SAPR services to military dependents 18 years and older who have been sexually assaulted and giving the option of both reporting options

(6) Supports to an active duty Military Service member regardless of when or where the sexual assault took place.

(7) Mandates training standards for legal assistance attorneys in performance of their role as SVCs/VLCs.

(8) Establishes "victim advocate privilege" through implementation of Executive Order 13593 establishing a new military rule of evidence (MRE) 514 which ensures the communications between a sexual assault victim and victim advocate is protected from disclosure.

(9) Addresses sexual assault victims safety concerns through the administering of a "safety assessment" by trained first responders.

(10) Increases efforts to effect change in the military culture by improving SAPR training standards specifically targeting accessions, annual, professional military education and leadership development, pre and post deployment, pre command, senior leadership (military and civilian), military recruiters, and responders.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that this rule does not:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; or

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

However, it has been determined that this rule does raise novel legal or policy issues arising out of legal mandates, and the principles set forth in these Executive Orders.

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule provides guidance and procedures for the DoD SAPR Program only.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

Section 105.15 of this interim final rule contains information collection requirements. These collection requirements have been assigned OMB Control Number 0704–0482, "Defense Sexual Assault Incident Database." The System of Records Notice for the rule is available at *http://dpcld.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570559/dhra-06-dod* The Privacy Impact Assessment associated with this rule is available at *http://www.dhra.mil/webfiles/docs/Privacy/PIA/DHRA.06.SAPRO.DSAID.7.15.2015.pdf* or *http://www.dhra.mil/Website/headquarters/info/pia.shtml.*

Executive Order 13132, "Federalism"

It has been certified that this rule does have federalism implications, as set forth in Executive Order 13132, because it incorporates the pre-emption language in section 536 of Public Law 114–92, which preempts state and local laws requiring disclosure of personally identifiable information of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official. This rule does have substantial direct effects on:

(a) The States;

(b) The relationship between the National Government and the States; or

(c) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 105

Crime, Health, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 105 is amended as follows:

PART 105—SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM PROCEDURES

■ 1. The authority citation for part 105 is revised to read as follows:

Authority: Secs. 570, 573, 574, and 578, Pub. L. 112–239, 126 Stat. 1632; secs. 1705, 1709, 1713, 1723, 1743, and 1747, Pub. L. 113–66, 127 Stat. 672; secs. 531, 537, 538, 542, and 543, Pub. L. 113–291, 128 Stat. 3292; and sec. 536, Pub. L. 114–92, 129 Stat. 817.

■ 2. Amend § 105.1 by:

■ a. In paragraph (d):

■ i. Removing "10 U.S.C. 113, 10 U.S.C. chapter 47 (also known and hereafter referred to as the "UCMJ")" and adding in its place "10 U.S.C."

■ ii. Removing "Public Laws 106–65, 108–375, 109–163, 109–364, 110–417, 111–84, 111–383, 112–81" and adding in its place "Public Laws 112–239, 113–66, 113–291, and 114–92."

■ b. Revising paragraphs (e) and (f).

The revisions read as follows:

§ 105.1 Purpose.

* * * * *

(e) Incorporates and cancels DTM 11–063, DTM 11–062, and DTM 14–007.

(f) Implements DoD policy and assigns responsibilities for the SAPR Program on prevention, response, and oversight to sexual assault according to the policies and guidance in:

(1) DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006 (hereby cancelled);

(2) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008;

(3) 32 CFR part 103;

(4) Title 10, U.S.C.;

(5) Under Secretary of Defense for Personnel and Readiness, "Task Force Report on Care for Victims of Sexual Assault," April 2004;

(6) Sections 561, 562, and 563 of Public Law 110–417, "Duncan National Defense Authorization Act for Fiscal Year 2009," October 14, 2008;

(7) Sections 584, 585, and 586 of Public Law 112–81, "National Defense Authorization Act for Fiscal Year 2012," December 31, 2011;

(8) Public Law 112–239, "National Defense Authorization Act for Fiscal Year 2013," January 2, 2013;

(9) Public Law 113–66, "National Defense Authorization Act for Fiscal Year 2014," December 26, 2013;

(10) Public Law 113–291, "Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015," December 29, 2014;

(11) Public Law 114–92, "National Defense Authorization Act for Fiscal Year 2016,"

(12) Directive Type Memorandum 11–063, "Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault," December 16, 2011;

(13) Directive Type Memorandum 11–062, "Document Retention in Cases of Restricted and Unrestricted Reports of Sexual Assault," December 16, 2011;

(14) Directive Type Memorandum 14–007, "Sexual Assault Incident Response Oversight (SAIRO) Report," September 30, 2014, hereby cancelled;

(15) DoDI 3020.41, "Operational Contract Support (OCS)," December 20, 2011;

(16) DoD 6400.1–M–1, "DoD Manual for Child Maltreatment and Domestic Abuse Incident Reporting System," July 2005, as amended;

(17) U.S. Department of Defense, "Manual for Courts-Martial, United States," current edition amended;

(18) DoDI 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf*;

(19) DoDI 1332.30, "Separation of Regular and Reserve Commissioned Officers," November 25, 2013, which can be found at *http://sapr.mil/public/docs/instructions/DoDI_133230_20131125.pdf*;

(20) Title 5, U.S.C.;

(21) DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014;

(22) Public Law 104–191, "Health Insurance Portability and Accountability Act of 1996," August 21, 1996;

(23) DoDI 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," January 25, 2013, as amended, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/550518p.pdf*;

(24) Presidential Memorandum, "Implementing the Prison Rape Elimination Act," May 17, 2012;

(25) Part 115 of title 28, Code of Federal Regulations, May 17, 2012;

(26) DoD Manual 8910.01, Volume 2, "DoD Information Collections Manual: Procedures for DoD Public Information Collections," June 30, 2014, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/891001m_vol2.pdf*;

(27) DoDI 5545.02, "DoD Policy for Congressional Authorization and Appropriations Reporting Requirements," December 19, 2008, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/554502p.pdf*;

(28) DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/891001m_vol1.pdf*;

(29) DoDI 6495.03, "Defense Sexual Assault Advocate Certification Program (D–SAACP)," September 10, 2015, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/649503p.pdf*;

(30) U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," current version, which can be found at *https://www.ncjrs.gov/pdffiles1/ovw/206554.pdf*;

(31) DoDI 5505.19, "Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs)," February 3, 2015, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/550519p.pdf*;

(32) DoDI 1030.2, "Victim and Witness Assistance Procedures," June 4, 2004, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/103002p.pdf*;

(33) DoD Directive 7050.06, "Military Whistleblower Protection," April 17, 2015, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf*;

(34) Under Secretary of Defense (Personnel and Readiness) Memorandum, "Guidelines for the DoD Safe Helpline," January 22, 2015;

(35) DoD Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," August 18, 1995, as amended, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/135002p.pdf*;

(36) Directive Type Memorandum 14–003, "DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support," February 12, 2014, (as amended), which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/DTM-14-003.pdf*;

(37) Under Secretary of Defense (Personnel and Readiness) Memorandum, "Certification Standards for Department of Defense Sexual Assault Prevention and Response Program Managers," March 10, 2015;

(38) DoDI 6400.07, "Standards for Victim Assistance Services in the Military Community," November 25, 2013, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/640007p.pdf*;

(39) DoD 6025.18–R, "DoD Health Information Privacy Regulation," January 24, 2003, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*;

(40) Executive Order 13593, "2011 Amendments to the Manual for Courts-Martial, United States," December 13, 2011, can be found at *http://www.gpo.gov/fdsys/pkg/FR-2011-12-16/pdf/X11-11216.pdf*;

(41) AD 2014–20/AFI 36–2909/SECNAVINST 5370.7D, dated 4 Dec 14,

"Prohibition of Retaliation Against Members of the Armed Forces Reporting a Criminal Offense," dates vary by Military Service;

(42) DoD Directive 1030.01, "Victim and Witness Assistance," April 13, 2004, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/103001p.pdf*;

(43) Executive Order 13696 Amendments to the Manual for Courts-Martial, dated June 17, 2015;

(44) Department of Defense 2014–2016 Sexual Assault Prevention Strategy, April 30, 2014, which can be found at *http://sapr.mil/public/docs/reports/SecDef_Memo_and_DoD_SAPR_Prevention_Strategy_2014-2016.pdf*;

(45) DoD Directive 5136.13, "Defense Health Agency (DHA)," September 30, 2013, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/513613p.pdf*;

(46) U.S. Department of Justice, Office on Violence Against Women, "National Training Standards for Sexual Assault Medical Forensic Examiners," current version, which can be found at *https://www.ncjrs.gov/pdffiles1/ovw/213827.pdf*;

(47) DoDI 6025.13, "Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health Care System (MHS)", February 17, 2011, as amended, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/602513p.pdf*;

(48) Under Secretary of Defense for Personnel and Readiness Memorandum, "Legal Assistance for Victims of Crime," October 17, 2011, which can be found at *http://www.sapr.mil/index.php/law-and-dod-policies/directives-and-instructions*; and

(49) DoD 4165.66–M, "Base Redevelopment and Realignment Manual," March 1, 2006, which can be found at *http://www.dtic.mil/whs/directives/corres/pdf/416566m.pdf*.

■ 3. Revise § 105.2 to read as follows:

§ 105.2 Applicability.

(a) This part applies to:

(1) Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the IG, DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereafter referred to collectively as the "DoD Components").

(2) National Guard and Reserve members, who are sexually assaulted when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, NG and Reserve members will be eligible to receive timely access to SAPR advocacy services from a SARC and a SAPR VA, and the appropriate non-medical referrals, if requested, in accordance with section 584(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012, as amended by section 1724 of NDAA for FY 2014 (Public Law 113–66). They also have access to a Special Victims Counsel in accordance with section 1044e of title 10, U.S.C. and are eligible to file a Restricted or Unrestricted Report. Reports of prior-to-military service sexual assault shall be handled in accordance with the procedures for Restricted and Unrestricted Reports outlined in this part, as appropriate based on the type of report made (Restricted or Unrestricted). Reserve Component members can report at any time and do not have to wait to be performing active service or be in inactive training to file their report.

(3) Military dependents 18 years of age and older who are eligible for treatment in the MHS, at installations continental United States (CONUS) and outside of the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner (See § 105.3). Adult military dependents may file unrestricted or restricted reports of sexual assault.

(4) The following non-military individuals who are victims of sexual assault are only eligible for limited emergency care medical services at a military treatment facility, unless that individual is otherwise eligible as a Service member or TRICARE (*http://www.tricare.mil*) beneficiary of the military health system to receive treatment in a MTF at no cost to them. At this time, they are only eligible to file an Unrestricted Report. They will also be offered the limited SAPR services to be defined as the assistance of a SARC and SAPR VA while undergoing emergency care OCONUS. These limited medical and SAPR services shall be provided to:

(i) DoD civilian employees and their family dependents 18 years of age and older when they are stationed or performing duties OCONUS and eligible for treatment in the MHS at military installations or facilities OCONUS. These DoD civilian employees and their family dependents 18 years of age and older only have the Unrestricted Reporting option.

(ii) U.S. citizen DoD contractor personnel when they are authorized to accompany the Armed Forces in a contingency operation OCONUS and their U.S. citizen employees. DoD contractor personnel only have the Unrestricted Reporting option. Additional medical services may be provided to contractors covered under this part in accordance with DoDI 3020.41 as applicable.

(5) Service members who were victims of sexual assault PRIOR to enlistment or commissioning are eligible to receive SAPR services (see § 105.3) under either reporting option. The DoD shall provide support to Service members regardless of when or where the sexual assault took place. The SARC or SAPR VA will assist a victim to complete a DD Form 2910, "Victim Reporting Preference Statement," and provide advocacy services and the appropriate referrals, if requested, for victimization occurring prior to military service.

(i) Prior-to-military service victimization includes adult sexual assault (including stranger sexual assault and intimate partner sexual assault, if the victim is no longer in the same intimate relationship) and sexual assault that was perpetrated on the Service member while he or she was still a child.

(ii) Reports of prior to military service sexual assault will be handled in accordance with the procedures for Restricted and Unrestricted Reports outlined in this part, as appropriate based on the type of report made (Restricted or Unrestricted).

(b) This part does not apply to victims of sexual assault perpetrated by a spouse or intimate partner (see § 105.3), or military dependents under the age of 18 who are sexually assaulted. The FAP, as described in DoD 6400.1–M–1, provides the full range of services to those individuals. When a sexual assault occurs as a result of domestic abuse or involves child abuse, the installation SARC and the installation FAP staff will direct the victim to FAP.

■ 4. Amend § 105.3 by:

■ a. Removing all alphabetical paragraph designators and arranging the terms in alphabetical order.

■ b. Removing the definition of "DoD Safe Helpline."

■ c. Adding the definition of "Family Advocacy Program (FAP)" in alphabetical order.

■ d. Revising the definitions of "Healthcare provider" and "Installation."

■ e. Adding the definitions of "Intimate partner," "Military OneSource," and "Open with limited information" in alphabetical order.

■ f. Removing the definition of "Reprisal."

■ g. Revising the definition of "Restricted reporting."

■ h. Adding the definitions of "Safe Helpline," "Safety assessment," "Special Victim Investigation and Prosecution Capability," and "Special Victims' Counsel (SVC)" in alphabetical order.

■ i. Revising the definition of "Victim Witness Assistance Program (VWAP)."

■ j. Adding the definition of "Victims' Legal Counsel (VLC)" in alphabetical order.

■ k. Removing the definition of "Working Integrated Product Team (WIPT)."

The revisions and additions read as follows:

§ 105.3 Definitions.

* * * * *

Family Advocacy Program (FAP). A DoD program designated to address child abuse and domestic abuse in military families and child maltreatment in DoD-sanctioned activities in cooperation with civilian social service agencies and military and civilian law enforcement agencies. Prevention, advocacy, and intervention services are provided to individuals who are eligible for treatment in military medical treatment facilities.

* * * * *

Healthcare provider. Those individuals who are employed or assigned as healthcare professionals, or are credentialed to provide healthcare services at a medical treatment facility (MTF), or who provide such care at a deployed location or otherwise in an official capacity. This also includes military personnel, DoD civilian employees, and DoD contractors who provide healthcare at an occupational health clinic for DoD civilian employees or DoD contractor personnel. Healthcare providers may include, but are not limited to:

(1) Licensed physicians practicing in the military healthcare system (MHS) with clinical privileges in obstetrics and gynecology, emergency medicine, family practice, internal medicine, pediatrics, urology, general medical officer, undersea medical officer, flight surgeon, psychiatrists, or those having clinical privileges to perform pelvic examinations or treat mental health conditions.

(2) Licensed advanced practice registered nurses practicing in the MHS with clinical privileges in adult health, family health, midwifery, women's health, mental health, or those having clinical privileges to perform pelvic examinations.

(3) Licensed physician assistants practicing in the MHS with clinical privileges in adult, family, women's health, or those having clinical privileges to perform pelvic examinations.

(4) Licensed registered nurses practicing in the MHS who meet the requirements for performing a SAFE as determined by the local privileging authority. This additional capability shall be noted as a competency, not as a credential or privilege.

(5) A psychologist, social worker or psychotherapist licensed and privileged to provide mental health are or other counseling services in a DoD or DoD-sponsored facility.

* * * * *

Installation. A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the DoD, including any leased facility. It does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the DoD in accordance with 4165.66–M, "Base Redevelopment and Realignment Manual, March 1, 2006.".

* * * * *

Intimate partner. Defined in 32 CFR part 61.

* * * * *

Military OneSource. A DoD-funded program providing comprehensive information on every aspect of military life at no cost to active duty, National Guard, and Reserve members, and their families. Military OneSource has a mandatory reporting requirement.

* * * * *

Open with limited information. Entry in DSAID to be used in the following situations: Victim refused or declined services, victim opt-out of participating in investigative process, third-party reports, local jurisdiction refused to provide victim information, or civilian victim with military subject.

* * * * *

Restricted reporting. Reporting option that allows a service member to confidentially disclose the assault to specified individuals (*i.e.,* SARC, SAPR VA, or healthcare personnel), and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without triggering an investigation or reporting the PII of the victim or alleged perpetrator unless an exception applies, as determined by the Department of Defense. For DoD installations located in state jurisdictions with mandatory reporting laws requiring disclosure of PII of a sexual military assault victim (or their adult dependent) or alleged offender, to federal, local or state law enforcement agencies, such disclosure is not required unless disclosure of PII is necessary to prevent or mitigate a serious and imminent threat as provided for in this part. Additional persons who may be entitled to Restricted Reporting are NG and Reserve members. DoD civilians and contractors, at this time, are only eligible to file an Unrestricted Report. Only a SARC, SAPR VA, or healthcare personnel may receive a Restricted Report, previously referred to as Confidential Reporting.

* * * * *

Safe Helpline. A crisis support service for members of the DoD community affected by sexual assault. The DoD Safe Helpline:

(1) Is available 24/7 worldwide with "click, call, or text" user options for anonymous and confidential support.

(2) Can be accessed by logging on to *www.safehelpline.org* or by calling 1–877–995–5247, and through the Safe Helpline mobile application.

(3) Is to be utilized as the sole DoD hotline.

(4) Does not replace local base and installation SARC or SAPR VA contact information.

* * * * *

Safety assessment. A set of guidelines and considerations post-sexual assault that the responsible personnel designated by the Installation Commander can follow to determine if a sexual assault survivor is likely to be in imminent danger of physical or psychological harm as a result of being victimized by or reporting sexual assault(s). The guidelines and considerations consist of a sequence of questions, decisions, referrals, and actions that responders can enact to contribute to the safety of survivors during the first 72 hours of report, and during other events that can increase the lethality risk for survivors (*e.g.,* arrests or command actions against the alleged perpetrators). Types of imminent danger may include non-lethal, lethal, or potentially lethal behaviors; the potential harm caused by the alleged perpetrator, family/friend(s)/acquaintance(s) of the alleged perpetrator, or the survivors themselves). The safety assessment includes questions about multiple environments, to include home and the workplace. Survivors are also assessed for their perception or experience of potential danger from their leadership or peers via reprisal or ostracism. The safety assessment contains a safety plan component that survivors can complete and take with them to help improve coping, social support, and resource access during their recovery period.

* * * * *

Special Victim Investigation and Prosecution Capability. In accordance with Public Law 112–81, a distinct, recognizable group of appropriately skilled professionals, including MCIO investigators, judge advocates, victim witness assistance personnel, and administrative paralegal support personnel, who work collaboratively to:

(1) Investigate and prosecute allegations of child abuse (involving sexual assault or aggravated assault with grievous bodily harm), domestic violence (involving sexual assault or aggravated assault with grievous bodily harm), and adult sexual assault (not involving domestic offenses).

(2) Provide support for the victims of such offenses.

Special Victims' Counsel (SVC). Attorneys who are assigned to provide legal assistance in accordance with section 1044e of title 10, U.S.C. and Service regulations. The Air Force, Army, NG, and Coast Guard refer to these attorneys as SVC. The Navy and Marine Corps refer to these attorneys as VLC.

* * * * *

Victim Witness Assistance Program (VWAP). Provides guidance in accordance with DoDI 1030.2 for assisting victims and witnesses of crime from initial contact through investigation, prosecution, and confinement. Particular attention is paid to victims of serious and violent crime, including child abuse, domestic violence and sexual misconduct.

Victims' Legal Counsel (VLC). Attorneys who are assigned to provide legal assistance in accordance with section 1044e of title 10, U.S.C. and Service regulations. The Navy and Marine Corps refer to these attorneys as VLC. The Air Force, Army, NG, and Coast Guard refer to these attorneys as SVC.

* * * * *

■ 5. Revise § 105.4 to read as follows:

§ 105.4 Policy.

It is DoD policy, in accordance with 32 CFR part 103, that:

(a) This part and 32 CFR part 103 establish and implement the DoD SAPR program. Unrestricted and Restricted Reporting Options are available to Service members and their adult military dependents in accordance with this part.

(b) The DoD goal is a culture free of sexual assault, through an environment of prevention, education and training, response capability (see § 105.3), victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons covered by this part and 32 CFR part 103.

(1) While a sexual assault victim may disclose information to whomever he or she chooses, an official report is made only when a DD Form 2910 is signed and filed with a SARC or SAPR VA, or when a Military Criminal Investigative Organization (MCIO) investigator initiates an investigation.

(2) For Restricted and Unrestricted Reporting purposes, a report can be made to healthcare personnel, but healthcare personnel then immediately contact the SARC or SAPR VA to fill out the DD Form 2910. Chaplains and military attorneys cannot take official reports.

(3) Unless a DD Form 2910 is filed with a SARC, a report to a Chaplain or military attorney may not result in the rendering of SAPR services or investigative action because of the privileges associated with speaking to these individuals. A Chaplain or military attorney should advise the victim to consult with a SARC to understand the full scope of services available or facilitate, with the victim's consent, contact with a SARC.

(c) The SAPR Program shall:

(1) Focus on the victim and on doing what is necessary and appropriate to support victim recovery, and also, if a Service member, to support that Service member to be fully mission capable and engaged.

(2) Require that medical care and SAPR services are gender-responsive, culturally-competent, and recovery-oriented as defined in 32 CFR 103.3.

(3) Not provide policy for legal processes within the responsibility of the Judge Advocates General (JAG) of the Military Departments provided in sections 801–946 of Title 10, United States Code, also known and referred to in this part as the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial, or for criminal investigative matters assigned to the IG, DoD.

(d) Command sexual assault awareness and prevention programs and DoD law enforcement (see § 105.3) and criminal justice procedures that enable persons to be held appropriately accountable for their actions shall be supported by all commanders.

(e) Standardized SAPR requirements, terminology, guidelines, protocols, and guidelines for training materials shall focus on awareness, prevention, and response at all levels, as appropriate.

(f) SARC and SAPR VA shall be used as standard terms as defined in and in accordance with 32 CFR part 103 throughout the Military Departments to facilitate communications and transparency regarding SAPR response capability.

(g) The SARC shall serve as the single point of contact for coordinating care to ensure that sexual assault victims receive appropriate and responsive care. All SARCs shall be authorized to perform VA duties in accordance with service regulations, and will be acting in the performance of those duties.

(h) All SARCs shall have direct and unimpeded contact and access to the installation commander (see § 105.3) and the immediate commander of the Service member victim and alleged Service member offender for the purpose of this part and 32 CFR part 103. The installation commander will have direct contact with the SARC(s) and this responsibility is not further delegable.

(1) If an installation has multiple SARCs on the installation, a Lead SARC shall be designated by the Service.

(2) For SARCs that operate within deployable commands that are not attached to an installation, they shall have access to the senior commander for the deployable command.

(i) A 24 hour, 7 day per week sexual assault response capability for all locations, including deployed areas, shall be established for persons covered in this part. An immediate, trained sexual assault response capability shall be available for each report of sexual assault in all locations, including in deployed locations.

(j) SARCs, SAPR VAs, and other responders (see § 105.3) will assist sexual assault victims regardless of Service affiliation.

(k) Service member and adult military dependent victims of sexual assault shall receive timely access to comprehensive medical and psychological treatment, including emergency care treatment and services, as described in this part and 32 CFR part 103.

(l) Sexual assault victims shall be given priority, and treated as emergency cases. Emergency care (see § 105.3) shall consist of emergency medical care and the offer of a SAFE. The victim shall be advised that even if a SAFE is declined the victim shall be encouraged (but not mandated) to receive medical care, psychological care, and victim advocacy.

(m) DoD prohibits granting a waiver for commissioning or enlistment in the Military Services when the person has a qualifying conviction (see § 105.3) for a crime of sexual assault or is required to be registered as a sex offender.

(n) There will be a safety assessment capability for the purposes of ensuring the victim, and possibly other persons, are not in physical jeopardy. A safety assessment will be available to all Service members, adult military dependents, and civilians who are eligible for SAPR services, even if the victim is not physically located on the installation. The installation commander or the deputy installation commander will identify installation personnel who have been trained and are able to perform a safety assessment of each sexual assault victim, regardless of whether he or she filed a Restricted or Unrestricted Report. Individuals tasked to conduct safety assessments must occupy positions that do not compromise the victim's reporting options. The safety assessment will be conducted as soon as possible, understanding that any delay may impact the safety of the victim.

(1) For Unrestricted Reports, if a victim is assessed to be in a high-risk situation, the assessor will immediately contact the installation commander or his or her deputy, who will immediately stand up a multi-disciplinary High-Risk Response Team in accordance with the guidance in § 105.13. This will be done even if the victim is not physically located on the installation.

(2) For Restricted Reports, if the victim is assessed to be in a high-risk situation, it may qualify as an exception to Restricted Reporting, which is necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person. The SARC will be immediately notified. The SARC will disclose the otherwise-protected confidential information only after consultation with the staff judge advocate (SJA) of the installation commander, supporting judge advocate, or other legal advisor concerned, who will advise the SARC as to whether an exception to Restricted Reporting applies, and whether disclosure of personally identifiable information (PII) to a military, other Federal, State or local law enforcement agency is necessary to prevent or mitigate an imminent and serious threat to the health and safety of the victim or another person, in accordance with the guidance in § 105.8. If the SJA determines that the victim is not in a high-risk situation or no serious and imminent threat to the health and safety of the victim or another person exists, then the report will remain Restricted. The SARC will ensure a safety assessment is conducted.

(o) Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC or SAPR VA at the time of making the report, or as soon as practicable, of the option to request an Expedited Transfer, in accordance with the procedures for commanders in § 105.9. A Service member may request:

(1) A temporary or permanent Expedited Transfer from their assigned command or installation to a different command or installation; or

(2) A temporary or permanent Expedited Transfer to a different location within their assigned command or installation.

(p) An enlisted Service member or a commissioned officer who made an Unrestricted Report of sexual assault and is recommended for involuntary separation from the Military Services within 1 year of final disposition of his or her sexual assault case may request a general or flag officer (G/FO) review of the circumstances of and grounds for the involuntary separation in accordance with DoDI 1332.14 and DoDI 1332.30.

(1) A Service member requesting this review must submit his or her written request to the first G/FO in the separation authority's chain of command before the separation authority approves the member's final separation action.

(2) Requests submitted after final separation action is complete will not be reviewed by a G/FO, but the separated Service member may apply to the appropriate Service Discharge Review Board or Board of Correction of Military/Naval Records of their respective Service for consideration.

(3) A Service member who submits a timely request will not be separated until the G/FO conducting the review concurs with the circumstances of and the grounds for the involuntary separation.

(q) DoD prohibits granting a waiver for commissioning or enlistment in the Military Services when the person has a qualifying conviction (see § 105.3) for a crime of sexual assault, or a conviction for an attempt of a sexual assault crime, or has ever been required to be registered as a sex offender, in accordance with section 657 of Title 10, Unites States Code.

(r) A Service member whose conviction of rape, sexual assault, forcible sodomy, or an attempt to commit one of the offenses is final, and who is not punitively discharged in connection with such convictions, will be processed for administrative separation for misconduct in accordance with DoDI 1332.14 and DoDI 1332.30.

(s) Information regarding Restricted Reports should only be released to persons authorized to accept Restricted Reports or as authorized by law or DoD regulation. Improper disclosure of confidential communications under Restricted Reporting or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

(t) Information regarding Unrestricted Reports should only be released to personnel with an official need to know, or as authorized by law. Improper disclosure of confidential communications under Unrestricted Reporting or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

(u) The DoD will retain the DD Forms 2910, "Victim Reporting Preference Statement," and 2911, "DoD Sexual Assault Forensic Examination (SAFE) Report," for 50 years, regardless of whether the Service member filed a Restricted or Unrestricted Report as defined in 32 CFR part 103. PII will be protected in accordance with sections 552a of Title 5, United States Code, also known as the Privacy Act of 1974 and 32 CFR part 310 and Public Law 104–191.

(1) *Document retention and SAFE Kit retention for unrestricted reports.* (i) The SARC will enter the Unrestricted Report DD Form 2910, in DSAID (see 32 CFR 103.3) as an electronic record within 48 hours of the report, where it will be retained for 50 years from the date the victim signed the DD Form 2910. The DD Form 2910 is located at the DoD Forms Management Program Web site at *http://www.dtic.mil/whs/directives/infomgt/forms/index.htm.*

(ii) The DD Form 2911 shall be retained in accordance with DoDI 5505.18. The DD Form 2911 is located at the DoD Forms Management Program Web site at *http://www.dtic.mil/whs/directives//forms/index.htm.*

(iii) If the victim had a SAFE, the SAFE Kit will be retained for 5 years in accordance with DoDI 5505.18 and in accordance with section 586 of the NDAA for FY 2012 (Public Law 112–81) as amended by section 538 of the NDAA for FY 2015 (Public Law 113–291). When the forensic examination is conducted at a civilian facility through a memorandum of understanding (MOU) or a memorandum of agreement (MOA) with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the SAFE.

(iv) Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. Personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 586 of the NDAA for FY 2012 (Public Law 112–81), as amended by section 538 of the NDAA for FY 2015 (Public Law 113–291) and DoD regulations.

(2) *Document retention and SAFE Kit retention for restricted reports.* (i) The SARC will retain a copy of the Restricted Report DD Form 2910 for 50 years, consistent with DoD guidance for the storage of PII. The 50-year time frame for the DD Form 2910 will start from the date the victim signs the DD Form 2910. For Restricted Reports, forms will be retained in a manner that protects confidentiality.

(ii) If the victim had a SAFE, the Restricted Report DD Form 2911 will be retained for 50 years, consistent with DoD guidance for the storage of PII. The 50-year time frame for the DD Form 2911 will start from the date the victim signs the DD Form 2910, but if there is no DD Form 2910, the timeframe will start from the date the SAFE Kit is completed. Restricted Report forms will be retained in a manner that protects confidentiality.

(iii) If the victim had a SAFE, the SAFE Kit will be retained for 5 years in a location designated by the Military Service concerned. When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit. The 5-year time frame will start from the date the victim signs the DD Form 2910, but if there is no DD Form 2910, the timeframe will start from the date the SAFE Kit is completed.

(iv) Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. In the event the report is converted to Unrestricted or an independent investigation is conducted, personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 586 of the NDAA for FY 2012 (Public Law 112–81), as amended by section 538 of the NDAA for FY 2015 (Public Law 113–291), and DoD regulations.

(v) Current or former Service members who made a report of sexual assault may contact their respective Service SAPR headquarters office or Service or NG SARCs for help accessing their DD Forms 2910 and 2911. Requests for release of information relating to sexual assaults will be processed by the organization concerned, in accordance with the procedures specified in the sections 552 and 552a of Title 5, United States Code also known as "The Freedom of Information Act" and "The Privacy Act of 1974" respectively.

(w) Service members who file Unrestricted and Restricted Reports of sexual assault and/or their dependents shall be protected from retaliation, reprisal, ostracism, maltreatment, or threats thereof, for filing a report.

(x) An incident report must be submitted in writing within 8 days after an Unrestricted Report of sexual assault has been made in accordance with section 1743 of the NDAA for FY 2014 (Public Law 113–66). This 8-day incident report will only be provided to personnel with an official need to know.

(y) At the time of reporting, victims must be informed of the availability of legal assistance and the right to consult with a Special Victims' Counsel or Victims' Legal Counsel (SVC/VLC) in accordance with section 1044e of Title 10, United States Code.

(z) Consistent with the Presidential Memorandum, "Implementing the Prison Rape Elimination Act," sexual assaults in DoD confinement facilities involving Service members will be governed by 28 CFR part 115.

■ 6. Revise § 105.5 to read as follows:

§ 105.5 Responsibilities.

(a) *USD(P&R).* The USD(P&R), in accordance with the authority in DoD Directive 5124.02 and 32 CFR part 103, shall:

(1) Oversee the DoD SAPRO (see 32 CFR 103.3) in accordance with 32 CFR part 103.

(2) Direct DoD Component implementation of this part in compliance with 32 CFR part 103.

(3) Direct that Director, SAPRO, be informed of and consulted on any changes in DoD policy or the UCMJ relating to sexual assault.

(4) With the Director, SAPRO, update the Deputy Secretary of Defense on SAPR policies and programs on a semi-annual schedule.

(5) Direct the implementation, use, and maintenance of DSAID.

(6) Oversee DoD SAPRO in developing DoD requirements for SAPR education, training, and awareness for DoD personnel consistent with this part.

(7) Appoint a G/FO or Senior Executive Service (SES) equivalent in the DoD as the Director, SAPRO, in accordance with section 1611(a) of the Ike Skelton NDAA for FY 2011, as amended by section 583 of the NDAA for FY 2012.

(8) In addition to the Director, SAPRO, assign at least one military officer from each of the Military Services and a National Guard member in title 10 status in the grade of O–4 or above to SAPRO for a minimum tour length of at least 18 months. Of the military officers assigned to the SAPRO, at least one officer shall be in the grade of O–6 or above in accordance with Public Law 112–81.

(9) Maintain the Defense Sexual Assault Advocate Certification Program (D–SAACP), the DoD-wide certification program (see § 105.3), with a national accreditor to ensure all sexual assault victims are offered the assistance of a SARC or SAPR VA who has obtained this certification in accordance with DoDI 6495.03.

(10) Maintain the DoD Safe Helpline (see § 105.3) to ensure members of the DoD community are provided with the specialized hotline help they need, anytime, anywhere.

(b) *Director, Department of Defense Human Resource Activity (DoDHRA).* The Director, DoDHRA, under the authority, direction, and control of the USD(P&R), shall provide operational support, budget, and allocate funds and other resources for the DoD SAPRO as outlined in 32 CFR part 103.

(c) *Assistant Secretary of Defense for Health Affairs (ASD(HA)).* The ASD(HA), under the authority, direction, and control of the USD(P&R), shall:

(1) Establish DoD sexual assault healthcare policies, clinical practice guidelines, related procedures, and standards governing the DoD healthcare programs for victims of sexual assault.

(2) Oversee the requirements and procedures in § 105.11.

(3) Establish guidance to:

(i) Give priority to sexual assault patients at MTFs as emergency cases.

(ii) Require standardized, timely, accessible, and comprehensive medical care at MTFs for eligible persons who are sexually assaulted.

(iii) Require that medical care is consistent with established community standards for the healthcare of sexual assault victims and the collection of forensic evidence from victims, in accordance with the current version of the U.S. Department of Justice, Office on Violence Against Women, Protocol *National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents* (the U.S. Department of Justice SAFE Protocol), instructions for victim and alleged offender exams found in the SAFE Kit, and DD Form 2911.

(A) Minimum standards of healthcare intervention that correspond to clinical standards set in the community shall include those established in the U.S. Department of Justice SAFE Protocol. However, clinical guidance shall not be solely limited to this resource.

(B) Prescribe training and certification requirements for sexual assault medical forensic examiners.

(C) Healthcare providers providing care to sexual assault victims in theaters of operation are required to have access to the current version of the U.S. Department of Justice SAFE Protocol.

(iv) Include deliberate planning to strategically position healthcare providers skilled in SAFE at predetermined echelons of care, for personnel with the responsibility of assigning medical assets.

(4) Establish guidance for medical personnel that requires a SARC or SAPR VA to be called in for every incident of sexual assault for which treatment is sought at the MTFs, regardless of the reporting option.

(5) Establish guidance in drafting MOUs or MOAs with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims in accordance with § 105.11. As part of the MOU or MOA, a SARC or SAPR VA will be notified for every incident of sexual assault.

(6) Establish guidelines and procedures for the Surgeon Generals of the Military Departments to require that an adequate supply of resources, to include personnel, supplies, and SAFE Kits, is maintained in all locations where SAFEs may be conducted by DoD, including deployed locations. Maintaining an adequate supply of SAFE Kits is a shared responsibility of the ASD(HA) and Secretaries of the Military Departments.

(7) In accordance with § 105.14, establish minimum standards for initial and refresher SAPR training required for all personnel assigned to MTFs and for specialized training for responders and healthcare providers.

(d) *General Counsel of the DoD (GC, DoD).* The GC, DoD, shall:

(1) Provide legal advice and assistance on proposed policies, DoD issuances, proposed exceptions to policy, and review of all legislative proposals affecting mission and responsibilities of the SAPRO.

(2) Inform the USD(P&R) of any sexual assault related changes to the UCMJ.

(e) *IG DoD.* The IG DoD shall:

(1) Establish guidance and provide oversight for the investigations of sexual assault in the DoD to meet the SAPR policy and training requirements of this part.

(2) Inform the USD(P&R) of any changes relating to sexual assault investigation policy or guidance.

(3) DoD IG shall collaborate with SAPRO in the development of investigative policy in support of sexual assault prevention and response.

(f) *Secretaries of the Military Departments.* The Secretaries of the Military Departments shall:

(1) Establish SAPR policy and procedures to implement this part.

(2) Coordinate all Military Service SAPR policy changes with the USD(P&R).

(3) Establish and publicize policies and procedures regarding the availability of a SARC.

(i) Require that sexual assault victims receive appropriate and responsive care and that the SARC serves as the single point of contact for coordinating care for victims.

(ii) Direct that the SARC or a SAPR VA be immediately called in every incident of sexual assault on a military installation. There will be situations where a sexual assault victim receives medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entity. In these cases, the MOU or MOA will require that a SARC be notified as part of the MOU or MOA

(iii) When a victim has a temporary change of station or PCS or is deployed, direct that SARCs immediately request victim consent to transfer case management documents. Require the SARC to document the consent to transfer in the DD Form 2910. Upon receipt of victim consent, SARCs shall expeditiously transfer case management documents to ensure continuity of care and SAPR services. All Federal, DoD, and Service privacy regulations must be strictly adhered to. However, when the SARC has a temporary change of station or PCS or is deployed, no victim consent is required to transfer the case to the next SARC. Every effort must be made to inform the victim of the case transfer. If the SARC has already closed the case and terminated victim contact, no other action is needed. See § 105.9 for Expedited Transfer protocols and commander notification procedures.

(iv) Require the assignment of at least one full-time SARC and one full-time SAPR VA to each brigade or equivalent unit in accordance with section 584 of the NDAA for FY 2012. Additional full-time or part-time SARCs and SAPR VAs may be assigned as necessary based on the demographics or needs of the unit in accordance with the NDAA for FY 2012. Only Service members or DoD civilians will serve as SARCs and SAPR VAs in accordance with section 584 of the NDAA for FY 2012.

(v) Sexual assault victims shall be offered the assistance of a SARC and/or SAPR VA who has been credentialed by the D–SAACP. D–SAACP certification requirements are contained in the DD Form 2950, "Department of Defense Sexual Assault Advocate Certification Program Application Packet," and DTM 14–001.

(vi) Issue guidance to ensure that equivalent standards are met for SAPR where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(4) Establish guidance to meet the SAPR training requirements for legal, MCIO, DoD law enforcement, responders and other Service members in § 105.14.

(5) Establish standards and periodic training for healthcare personnel and healthcare providers regarding the Unrestricted and Restricted Reporting options of sexual assault in accordance with § 105.14. Enforce eligibility standards for healthcare providers to perform SAFEs.

(6) Require first responders (see § 105.3) to be identified upon their assignment and trained, and require that their response times be continually monitored by their commanders to ensure timely response to reports of sexual assault. The response for MCIOs is governed by DoDI 5505.19. See § 105.14 for training requirements. Ensure established response time is based on local conditions but reflects that sexual assault victims will be treated as emergency cases.

(7) Upon request, submit a copy of SAPR training programs or SAPR training elements to USD(P&R) through SAPRO for evaluation of consistency and compliance with DoD SAPR training standards in this part and current SAPR core competencies and learning objectives. The Military Departments will correct USD(P&R) identified DoD SAPR policy and training standards discrepancies.

(8) Establish policy that ensures commanders are accountable for implementing and executing the SAPR

program at their installations consistent with this part, 32 CFR part 103, and their Service regulations.

(9) Require the assignment of at least one full-time sexual assault medical forensic examiner to each MTF that has an emergency department that operates 24 hours per day. Additional sexual assault medical forensic examiners may be assigned based on the demographics of the patients who utilize the MTF.

(10) In cases of MTFs that do not have an emergency department that operates 24 hours per day, require that a sexual assault medical forensic examiner be made available to a patient of the facility through an MOU or MOA with local private or public sector entities and consistent with U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents", when a determination is made regarding the patient's need for the services of a sexual assault medical forensic examiner. The MOU or MOA will require that SARCs or SAPR VAs are contacted and that SAFE Kits are collected and preserved in accordance with § 105.12.

(11) Establish guidance to direct that all Unrestricted Reports of violations (to include attempts) of sexual assault and non-consensual sodomy, as defined in title 10, U.S.C., against adults are immediately reported to the MCIO.

(i) A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate MCIO. A unit commander shall not conduct internal, command-directed investigations on sexual assault allegations (*i.e.,* no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

(ii) Commander(s) of the Service member(s) who is a subject of a sexual assault allegation shall, as soon as possible, provide in writing all disposition data, to include any administrative or judicial action taken, if any, stemming from the sexual assault investigation to the MCIO.

(iii) Once the investigation is completed, MCIOs shall submit case disposition data that satisfies the reporting requirements for DSAID identified in § 105.15 and the annual reporting requirements in § 105.16.

(12) Establish SAPR policy that requires commanders to be responsive to a victim's desire to discuss his or her case with the installation commander tasked by the Military Service with oversight responsibility for the SAPR program in accordance with 32 CFR part 103.

(13) Establish standards for command assessment of organizational SAPR climate, including periodic follow-up assessments. In accordance with section 572 of the NDAA for FY 2013, these standards will require that commanders conduct such climate assessments within 120 days of assuming command and annually thereafter.

(14) As a shared responsibility with ASD(HA), direct installation commanders to maintain an adequate supply of SAFE Kits in all locations where SAFEs are conducted, including deployed locations. Direct that Military Service SAPR personnel, to include medical personnel, are appropriately trained on protocols for the use of the SAFE Kit and comply with prescribed chain of custody procedures described in their Military Service-specific MCIO procedures.

(15) Establish procedures that require, upon seeking assistance from a SARC, SAPR VA, MCIO, the VWAP, or trial counsel, that each Service member who reports that she or he has been a victim of a sexual assault be informed of and given the opportunity to:

(i) Consult with SVC/VLC, legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct (see § 105.3), to consult with defense counsel.

(A) When the alleged perpetrator is the commander or in the victim's chain of command, such victims shall be informed of the opportunity to go outside the chain of command to report the offense to other commanding officers (CO) or an Inspector General. Victims shall be informed that they can also seek assistance from the DoD Safe Helpline (see § 105.3).

(B) The victim shall be informed that legal services are optional and may be declined, in whole or in part, at any time.

(C) Commanders shall require that information and services concerning the investigation and prosecution be provided to victims in accordance with VWAP procedures in DoDI 1030.2.[3]

(ii) Have a SARC or SAPR VA present when law enforcement or trial counsel interviews the victim.

(iii) Have a SARC or SAPR VA, counsel for the government, or SVC or VLC present, when defense counsel interviews the victim, in accordance with Article 46 of the UCMJ (section 846 of Title 10 U.S.C.)

(16) Establish procedures to ensure that in the case of a general or special court-martial the trial counsel causes each qualifying victim to be notified of the opportunity to receive a copy of the record of trial (not to include sealed materials, unless otherwise approved by the presiding military judge or appellate court, classified information, or other portions of the record the release of which would unlawfully violate the privacy interests of any party, and without a requirement to include matters attached to the record under Rule for Courts-Martial (R.C.M.) 1103(b)(3) in the Manual for Courts-Martial, United States. A qualifying victim is an individual named in a specification alleging an offense under Articles 120, 120b, 120c, or 125 of the UCMJ (sections 920, 920b, 920c, or 925 of title 10, U.S.C.), or any attempt to commit such offense in violation of Article 80 of the UCMJ (section 880 of title 10, U.S.C.), if the court-martial resulted in any finding to that specification. If the victim elects to receive a copy of the record of proceedings, it shall be provided without charge and within a timeframe designated by regulations of the Military Department concerned. The victim shall be notified of the opportunity to receive the record of the proceedings in accordance R.C.M. 1103(g)(3)(C) in Manual for Courts-Martial, United States.

(17) Require that a completed DD Form 2701, "Initial Information for Victims and Witnesses of Crime," be distributed to the victim as required by paragraph 6.1 of DoDI 1030.2. (DD Form 2701 may be obtained via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/index.htm* and in DoDI 5505.18.)

(18) Establish procedures to protect Service member victims of sexual assault and/or their dependents from retaliation, ostracism, maltreatment and reprisal in accordance with section 1709 of the NDAA for FY 2014, DoDD 7050.06[4] and Service regulations. Require the SARC or SAPR VA to inform victims of the resources, listed in § 105.8, to report instances of retaliation, reprisal, ostracism, or maltreatment to request a transfer or military protective order (MPO).

(19) Require SARCs and SAPR VAs to advise victims who reported a sexual assault or sought mental health treatment for sexual assault of the opportunity to communicate with a G/FO regarding issues related to their military career that the victim believes are associated with the sexual assault.

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[3] Available: *http://www.dtic.mil/whs/directives/corres/pdf/103002p.pdf.*

[4] Available: *http://www.dodig.mil/HOTLINE/Documents/DODInstructions/DOD%20Directive%207050.06.pdf.*

(20) Establish procedures to require commanders to protect the SARC and SAPR VA from retaliation, reprisal, ostracism, or maltreatment related to the execution of their duties and responsibilities.

(21) Establish procedures to require commanders to protect witnesses and bystanders who intervene to prevent sexual assaults or who report sexual assaults, from retaliation, reprisal, ostracism, or maltreatment in accordance with section 1709 of the NDAA for FY 2014.

(22) Require specialized training for all supervisors (officer, enlisted, civilian) down to the most junior supervisor that explains:

(i) That all supervisors in the victim's chain of command, officer and enlisted, are required when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, to take appropriate measures to protect the victim from retaliation, reprisal, coercion, ostracism, and maltreatment in Unrestricted Reports.

(ii) What constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections and procedures for reporting allegations of reprisal in accordance with DoDD 7050.06.

(iii) The resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, or sexual harassment or to request a transfer or MPO.

(iv) That victims who reported a sexual assault or sought mental health treatment for sexual assault, have the opportunity to communicate with the G/FO regarding issues related to their military career that the victim believes are associated with the sexual assault.

(23) Establish Military Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the circumstances, and at a time that encourages continued victim cooperation.

(24) Establish expedited transfer procedures of victims of sexual assault in accordance with §§ 105.4(n) and 105.9.

(25) Appoint a representative to the SAPR IPT in accordance with § 105.7, and provide chairs or co-chairs for working groups, when requested. Appoint a representative to SAPRO oversight teams upon request.

(26) Provide quarterly and annual reports of sexual assault involving Service members to Director, SAPRO, to be consolidated into the annual Secretary of Defense report to Congress in accordance with 32 CFR part 103 and section 1631(d) of Public Law 111–84. (See § 105.16 for additional information about reporting requirements.)

(27) Support victim participation in semi-annual Survivor Meetings with the Director of SAPRO.

(28) Support victim participation in the Survivor Experience Survey referred to in § 105.16, conducted by the Defense Manpower Data Center (DMDC).

(29) Provide budget program and obligation data, as requested by the DoD SAPRO.

(30) Require that reports of sexual assault be entered into DSAID through MCIO case management systems or by direct data entry by SARCs and legal officers. Establish procedures to regularly review and assure the quality of data entered into DSAID.

(i) Data systems that interface with DSAID shall be modified and maintained to accurately provide information to DSAID.

(ii) Only SARCs who are credentialed (and maintain that credential) through D–SAACP and legal officer appointed by their Military Service shall be permitted access to enter sexual assault reports and case outcome data into DSAID.

(31) Provide Director, SAPRO, a written description of any sexual assault related research projects contemporaneous with commencing the actual research. When requested, provide periodic updates on results and insights. Upon conclusion of such research, a summary of the findings will be provided to DoD SAPRO as soon as practicable.

(32) Establish procedures for supporting the DoD Safe Helpline in accordance with the USD(P&R) Memorandum, "Guidelines for the DoD Safe Helpline", which provides guidance for the referral database, providing a timely response to victim feedback, and publicizing the DoD Safe Helpline to SARCs, SAPR VAs, Service members, and to persons at military correctional facilities.

(i) Utilize the DoD Safe Helpline as the sole DoD hotline to provide crisis intervention, facilitate victim reporting through connection to the nearest SARC, and other resources as warranted.

(ii) The DoD Safe Helpline does not replace local base and installation SARC or SAPR VA contact information.

(33) Establish procedures to implement SAPR training in accordance with § 105.14, to include explaining the eligibility for SVC or VLC for individuals making Restricted and Unrestricted Reports of sexual assault, and the types of legal assistance authorized to be provided to the sexual assault victim in accordance with section 1565b and 1004e of Title 10 U.S.C. Explain that the nature of the relationship between a SVC or VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client, in accordance with section 1044e of Title 10 U.S.C. Training should be provided by subject matter experts on the topics outlined in § 105.14.

(34) Require that reports of sexual assaults are provided to the Commanders of the Combatant Commands for their respective area of responsibility on a quarterly basis, or as requested.

(35) For CMGs:

(i) Require the installation commander or the deputy installation commander chair the multi-disciplinary CMG (see § 105.13) on a monthly basis to review individual cases of Unrestricted Reporting of sexual assault, facilitate monthly victim updates, direct system coordination, accountability, and victim access to quality services. This responsibility will not be delegated.

(ii) Require that the installation SARC (in the case of multiple SARCs on an installation, then the Lead SARC) serve as the co-chair of the CMG. This responsibility will not be delegated.

(iii) If the installation is a joint base or if the installation has tenant commands, the commander of the tenant organization and their designated Lead SARC shall be invited to the CMG meetings when a Service member in his or her unit or area of responsibility is the victim of a sexual assault. The commander of the tenant organization shall provide appropriate information to the host commander, to enable the host commander to provide the necessary supporting services.

(iv) The Secretaries of the Military Departments shall issue guidance to ensure that equivalent standards are met for case oversight by CMGs in situations where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(36) Establish document retention procedures for Unrestricted and Restricted Reports of sexual assault in accordance with § 105.4(t).

(37) When drafting MOUs or MOAs with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims, require commanders to include the following provisions:

(i) Notify the SARC or SAPR VA.

(ii) Local private or public sector providers shall have processes and procedures in place to assess that local community standards meet or exceed those set forth in the U.S. Department of Justice SAFE Protocol as a condition of the MOUs or MOAs.

(38) Comply with collective bargaining obligations, if applicable.

(39) Provide SAPR training and education for civilian employees of the military departments in accordance with Section 585 of Public Law 112–81.

(40) In accordance with Section 572 of Public Law 112–239, establish a record on the disposition of any Unrestricted Report of rape, sexual assault, forcible sodomy, or an attempt to commit these offenses involving a member of the Military Services, whether such disposition is court-martial, nonjudicial punishment, or other administrative action.

(i) The record of the disposition of an Unrestricted Report of sexual assault will, as appropriate, include information regarding:

(A) Documentary information (*i.e.,* MCIO adult sexual assault investigative reports) collected about the incident, other than investigator case notes.

(B) Punishment imposed, if any, including the sentencing by judicial or nonjudicial means, including incarceration, fines, restriction, and extra duty as a result of a military court-martial, federal or local court, and other sentencing, or any other punishment imposed.

(C) Adverse administrative actions, if any, taken against the subject of the investigation.

(D) Any pertinent referrals made for the subject of the investigation, offered as a result of the incident, such as drug and alcohol counseling and other types of counseling or intervention.

(ii) The disposition records will be retained for a period of not less than 20 years.

(A) Documentary information (*i.e.,* MCIO adult sexual assault investigative reports) will be retained in accordance with DoDI 5505.18.

(B) Punishment imposed by nonjudicial or judicial means, adverse administrative actions, any pertinent referrals made for the subject of the investigation, and information from the records that satisfies the reporting requirements established in section 1631 of Public Law 111–383 will be incorporated into DSAID.

(41) In accordance with DoD Directive 1350.2, require that the commander of each military command and other units specified by the Secretary of Defense for purposes of the policy will conduct, within 120 days after the commander assumes command and at least annually thereafter while retaining command, a climate assessment of the command or unit for purposes of preventing and responding to sexual assaults.

(i) The climate assessment will include an opportunity for members of the Military Services to express their opinions regarding the manner and extent to which their leaders, including commanders, respond to allegations of sexual assault and complaints of sexual harassment and the effectiveness of such response.

(ii) The compliance of commanding officers in conducting organizational climate assessments in accordance with section 572 of Public Law 112–239 as most recently amended by section 1721 of Public Law 113–291 must be verified and tracked.

(42) Establish and publicize policies and procedures for reporting a sexual assault that will clearly explain both reporting options and who can receive Restricted Reports. Mandate the posting and wide dissemination of information about resources available to report and respond to sexual assaults, including the establishment of hotline phone numbers and Internet Web sites available to all members of the Military Services.

(43) Mandate a general education campaign to notify members of the Military Services of the authorities available in accordance with chapter 79 of title 10, U.S.C., for the correction of military records when a member experiences any retaliatory personnel action for making a report of sexual assault or sexual harassment.

(44) Require the SARCs and SAPR VAs to collaborate with designated Special Victims Investigation and Prosecution (SVIP) Capability personnel during all stages of the investigative and military justice process in accordance with DoDI 5505.19, to ensure an integrated capability, to the greatest extent possible, in accordance with DTM 14–003.

(45) Require that, if a complaint of a sex-related offense is made against a Service member and he or she is convicted by court-martial or receives non-judicial punishment or punitive administrative action for that offense, a notation to that effect will be placed in the Service member's personnel service record, regardless of his or her grade.

(i) A notation may NOT be placed in the restricted section of the Service member's personnel service record.

(ii) "Sex-related offenses" include a violation of Articles 120, 120a, 120b, 120c, or 125 of the UCMJ ((sections 920, 920a, 920b, 920c, or 925 of title 10 U.S.C.) or an attempt to commit these offenses punishable under Article 80 of the UCMJ (section 880 of title 10 U.S.C.).

(iii) The commanding officer of a facility, installation, or unit to which a Service member is permanently assigned or transferred will review the history of sex-related offenses as documented in the Service member's personnel service record. The purpose of this review is for commanders to familiarize themselves with such history of the Service member.

(iv) The notation and review requirement should not limit or prohibit a Service member's capacity to challenge or appeal the placement of a notation, or location of placement of a notation, in his or her personnel service record in accordance with otherwise applicable service procedures.

(46) In accordance with the requirements of section 1743 of Public Law 113–66 require the designated commander to submit a written incident report no later than 8 days after whichever happens first:

(i) An Unrestricted Report of sexual assault has been made to a SARC or SAPR VA through a DD Form 2910; or

(ii) An independent investigation has been initiated by an MCIO.

(47) Require timely access to a SARC or SAPR VA by any member of the Reserve Component in accordance with § 105.2.

(48) Require that the Military Service Academies include in their curricula substantive course work that addresses honor, respect, character development, leadership, and accountability, as they pertain to the issue of preventing sexual assault in the Military Services and providing the appropriate response to sexual assault when it occurs.

(i) In addition to the substantive coursework in academy curricula, training will be provided within 14 days after the initial arrival of a new cadet or midshipman at the Military Service Academies and repeated annually thereafter. Training will be conducted in the manner described in § 105.15, using adult learning methods.

(ii) Such training will include, at a minimum, a brief history of the problem of sexual assault in the Military Services, a definition of sexual assault, information relating to reporting a sexual assault, victims' rights, and dismissal and dishonorable discharge for offenders.

(49) Ensure that the provisions of title 17 of Public Law 113–66 apply to the Military Service Academies as required by section 552 of Public Law 113–291.

(50) Provide notice to a Service member, whenever he or she is required to complete Standard Form (SF) 86,

"Questionnaire for National Security Positions," in connection with an application, investigation, or reinvestigation for a security clearance, that it is DoD policy to answer "no" to question 21 of SF 86 with respect to consultation with a health care professional if:

(i) The individual is a victim of a sexual assault; and

(ii) The consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.

(51) Require the installation SARC and the installation FAP staff to coordinate when a sexual assault occurs as a result of domestic abuse, domestic violence, or involves child abuse, to ensure the victim is directed to FAP.

(52) Require commanders to direct SARCs to provide information on incidents of sexual assault for inclusion in the Commander's Critical Information Requirements (CCIR) report. CCIR reportable incidents are those meeting criteria as determined by the Secretary of Defense.

(53) Establish procedures to implement minimum standards for the qualifications necessary to be selected, trained, and certified for assignment as a SAPR Program Manager in accordance with USD(P&R) Memorandum, "Certification Standards for Department of Defense Sexual Assault Prevention and Response Program Managers."

(54) Establish a confidential process, utilizing boards for the correction of military records of the Military Departments by which a sexual assault victim during service in the Military may challenge the terms or the characterization of the discharge or separation on the grounds that the terms or characterization were adversely affected by being a sexual assault victim in accordance with section 547 of Public Law 113–291.

(g) *Chief, NGB.* On behalf of and with the approval of the Secretaries of the Army and Air Force, and in coordination with DoD SAPRO and the State Adjutants General, the Chief, NGB, establishes and implements SAPR policy and procedures for eligible NG members, including the requirement for timely access to a SARC or SAPR VA by any NG member as required by section 584(a) of Public Law 112–81, as amended by section 1724 of Public Law 113–66.

(h) *Chairman of the Joint Chiefs of Staff.* The Chairman of the Joint Chiefs of Staff shall monitor implementation of this part and 32 CFR part 103.

(i) *Commanders of the Combatant Commands.* The Commanders of the Combatant Commands, through the Chairman of the Joint Chiefs of Staff and in coordination with the other Heads of the DoD Components, shall:

(1) Require that a SAPR capability provided by the Executive Agent (see § 105.3) is incorporated into operational planning guidance in accordance with 32 CFR part 103 and this part.

(2) Require the establishment of an MOU, MOA, or equivalent support agreement with the Executive Agent in accordance with 32 CFR part 103 and this part and requires at a minimum:

(i) Coordinated efforts and resources, regardless of the location of the sexual assault, to direct optimal and safe administration of Unrestricted and Restricted Reporting options with appropriate protection, medical care, counseling, and advocacy.

(A) Ensure a 24 hour per day, 7 day per week response capability. Require first responders to respond in a timely manner.

(B) Response times shall be based on local conditions; however, sexual assault victims shall be treated as emergency cases.

(ii) Notice to SARC of every incident of sexual assault on the military installation, so that a SARC or SAPR VA can respond and offer the victim SAPR services. In situations where a sexual assault victim receives medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entities, as part of the MOU or MOA, the SARC or SAPR VA shall be notified and shall respond.

■ 7. Amend § 105.7 by:

■ a. Revising paragraph (a)(7).

■ b. In paragraph (a)(8), removing ", sections 113 and 4331 of title 10, U.S.C.," and "of this part."

■ c. In paragraph (a)(10), removing "fiscal year (FY)" and adding in its place "FY."

■ d. In paragraph (a)(12), removing "the development" and adding in its place "use."

■ e. In paragraph (a)(13), removing "Establish, oversee, publicize and maintain" and adding in its place "Maintain, oversee, and publicize."

■ f. In paragraph (a)(14), removing "Establish" and adding in its place "Maintain."

■ g. In paragraph (a)(15) introductory text, removing "Army Criminal Investigation Laboratory (USACIL)" and adding in its place "Defense Forensic Science Center (DFSC)."

■ h. In paragraph (a)(15)(i), removing "USACIL" and adding in its place "DFSC."

■ i. In paragraph (a)(15)(ii), removing "USACIL" and adding in its place "DFSC" everywhere it appears.

■ j. Redesignating paragraph (a)(16) as paragraph (a)(20), and adding paragraphs (a)(16) through (19).

■ k. Adding paragraphs (a)(21) and (22).

■ l. In paragraph (b)(1)(ii):

■ i. Removing "Secretaries" and adding in its place "Secretary."

■ ii. Removing "Departments of the Army and the Air Force" and adding in its place "Department of the Army."

■ m. Redesignating paragraph (b)(1)(iii) through (v) as paragraphs (b)(1)(iv) through (vi), and adding a new paragraph (b)(1)(iii).

■ n. In newly redesignated paragraph (b)(1)(vi), removing "Public Law 100–504" and adding in its place "title 5 U.S.C., also known as "The Inspector General Act of 1978.' "

■ o. Revising paragraph (b)(2)(ii).

■ p. In paragraph (b)(2)(iv), in the first sentence, removing "WIPTs" and adding in its place "working groups" and, in the second sentence, removing "WIPTs" and adding in its place "Working groups".

■ q. In paragraph (b)(3)(iii), removing "WIPTs" and adding in its place "working groups" everywhere it appears.

The revisions and additions read as follows:

§ 105.7 Oversight of the SAPR Program.

(a) * * *

(7) Develop oversight metrics to measure compliance and effectiveness of SAPR training, sexual assault awareness, prevention, and response policies and programs. Collect and maintain data in accordance with these metrics, analyze data, and make recommendations regarding SAPR policies and programs to the USD(P&R) and the Secretaries of the Military Departments.

* * * * *

(16) Act as the DoD liaison between the DoD and other federal and State agencies on programs and efforts relating to sexual assault prevention and response.

(17) Oversee development of strategic program guidance and joint planning objectives for resources in support of the sexual assault prevention and response program, and make recommendations on modifications to policy, law, and regulations needed to ensure the continuing availability of such resources.

(18) Quarterly include Military Service Academies as a SAPR IPT standard agenda item, and semi-annually meet with the academy superintendents to facilitate oversight of the implementation of SAPR programs.

(19) Develop and administer standardized and voluntary surveys for

victims of sexual assault on their experiences with SAPR victim assistance, the military health system, the military justice process, and other areas of support. The surveys will be regularly offered to victims and administered in a way that protects victim privacy and does not adversely impact the victim's legal, career, and health status.

* * * * *

(21) Participate in the DoD Victim Assistance Leadership Council in accordance with DoDI 6400.07.

(22) Maintain the SAPRO awards program recognizing SARCS and/or SAPR VAs or SAPR programs within the Military Departments, and with consent of the Secretary of the Department of Homeland Security, the SARCS and/or SAPR VAs of the Department of Homeland Security.

(b) * * *

(1) * * *

(iii) Director, Air Force Sexual Assault Prevention and Response Program.

* * * * *

(2) * * *

(ii) Serve as the implementation and oversight arm of the DoD SAPR Program. Coordinate policy and review the DoD's SAPR policies and programs consistent with this part and 32 CFR part 103, as necessary. Monitor the progress of program elements, to include DoD SAPR Strategic Plan tasks, DoD Sexual Assault Prevention Strategy tasks, and NDAA implementation for adult sexual assault related issues.

* * * * *

■ 8. Amend § 105.8 by:

■ a. In paragraph (a) introductory text:

■ i. Redesignating footnote 6 as footnote 5.

■ ii. Adding the words "in accordance with 32 CFR part 103" at the end of the last sentence.

■ b. Revising paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(2)(iii) through (v), (a)(3)(ii) and (iii), and (a)(4).

■ c. In paragraph (a)(5)(i), removing "and non-commissioned officer chain of command" and adding in its place "or non-commissioned officer chain of command."

■ d. In paragraph (a)(5)(ii), removing "or" and adding ", assigned SVC/VLC, legal assistance officer, or chaplain" after "healthcare personnel."

■ e. Revising paragraphs (a)(6) introductory text, (a)(6)(ii), and (a)(7).

■ f. Adding paragraph (a)(8).

■ g. Revising paragraph (b).

■ h. In paragraph (c) introductory text, removing "complete Unrestricted Reporting" and adding in its place "Unrestricted Reporting"; and removing "pursue accountability" and adding in its place "pursue offender accountability."

■ i. In paragraph (c)(1), removing "alleged offender accountable" and adding in its place "alleged offender appropriately accountable."

■ j. Revising paragraphs (d), (e)(2) introductory text, and (e)(2)(ii) and (iii).

■ l. In paragraph (e)(2)(iv), removing "victim treatment" and adding in its place "victim healthcare."

■ m. In paragraph (e)(2)(v), removing "a duly authorized trial counsel subpoena" and adding in its place "a duly authorized subpoena."

■ n. In paragraph (e)(3):

■ i. Removing "DoD Directive 5400.11–R" and adding in its place "DoD Directive 5400.11 and DoD 6025.18–R" and removing footnote 7.

■ ii. Removing "or State statute" and adding in its place "or another Federal or State statute."

■ o. Revising paragraphs (e)(4) and (5).

■ p. In paragraph (f), removing "offender or the victim" and adding in its place "alleged offender or the victim."

■ q. Adding paragraph (g).

The revisions and additions read as follows:

§ 105.8 Reporting options and sexual assault reporting procedures.

(a) * * *

(1) *Unrestricted reporting.* This reporting option triggers an investigation, command notification, and allows a person who has been sexually assaulted to access healthcare treatment and the assignment of a SARC and a SAPR VA. When a sexual assault is reported through Unrestricted Reporting, a SARC shall be notified, respond or direct a SAPR VA to respond, and offer the victim healthcare treatment and a SAFE, and inform the victim of available resources. The SARC or SAPR VA will explain the contents of the DD Form 2910 and request that the victim elect a reporting option on the form. If the victim elects the Unrestricted Reporting option, a victim may not change from an Unrestricted to a Restricted Report. If the Unrestricted option is elected, the completed DD Form 2701, which sets out victims' rights and points of contact, shall be distributed to the victim in Unrestricted Reporting cases by DoD law enforcement agents. If a victim elects this reporting option, a victim may not change from an Unrestricted to a Restricted Report.

(2) *Restricted reporting.* This reporting option does not trigger an investigation. The command is notified that "an alleged sexual assault" occurred, but is not given the victim's name or other personally identifying information. Restricted Reporting allows Service members and military dependents who are adult sexual assault victims to confidentially disclose the assault to specified individuals (SARC, SAPR VA, or healthcare personnel) and receive healthcare treatment and the assignment of a SARC and SAPR VA at DoD installations. A sexual assault victim can report directly to a SARC, who will respond or direct a SAPR VA to respond, and offer the victim healthcare treatment and a SAFE, and explain to the victim the resources available through the DD Form 2910, where the reporting option is elected. The Restricted Reporting option is only available to Service members and adult military dependents. Restricted Reporting may not be available in all cases, (See §§ 105.3 and 105.8(a)(6).) If a victim elects this reporting option, a victim may convert a Restricted Report to an Unrestricted Report at any time. The conversion to an Unrestricted Report will be documented with a signature by the victim and the signature of the SARC or SAPR VA in the appropriate block on the DD Form 2910.

(i) Only the SARC, SAPR VA, and healthcare personnel are designated as authorized to accept a Restricted Report. Healthcare personnel, to include psychotherapist and other personnel listed in Military Rules of Evidence (MRE) 513 pursuant to the Manual for Courts-Martial, United States, who received a Restricted Report (meaning that a victim wishes to file a DD Form 2910 or have a SAFE) shall contact a SARC or SAPR VA in accordance with requirements in § 105.11, to assure that a victim is offered SAPR services and so that a DD Form 2910 can be completed and retained.

* * * * *

(iii) In the course of otherwise privileged communications with a chaplain, SVC/VLC, or legal assistance attorney, a victim may indicate that he or she wishes to file a Restricted Report. If this occurs, a chaplain, SVC/VLC, and legal assistance attorney shall, with the victim's consent, facilitate contact with a SARC or SAPR VA to ensure that a victim is offered SAPR services and so that a DD Form 2910 can be completed. A chaplain, SVC/VLC, or legal assistance attorney cannot accept a Restricted Report.

(iv) A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication between a victim and a SARC and SAPR VA, in a case arising under the UCMJ, if such communication is made for the purpose of facilitating advice or supportive assistance to the victim in accordance with MRE 514 of the Manual for Courts-Martial, United States.

(v) A sexual assault victim certified under the personnel reliability program (PRP) is eligible for both the Restricted and Unrestricted Reporting options. If electing Restricted Reporting, the victim is required to advise the competent medical authority of any factors that could have an adverse impact on the victim's performance, reliability, or safety while performing PRP duties. If necessary, the competent medical authority will inform the certifying official that the person in question should be suspended or temporarily decertified from PRP status, as appropriate, without revealing that the person is a victim of sexual assault, thus preserving the Restricted Report.

(3) * * *

(ii) The victim's decision not to participate in an investigation or prosecution will not affect access to SARC and SAPR VA services, medical and psychological care, or services from an SVC or VLC. These services shall be made available to all eligible sexual assault victims.

(iii) If a victim approaches a SARC, or SAPR VA, or healthcare provider and begins to make a report, but then changes his or her mind and leaves without signing the DD Form 2910 (the form where the reporting option is selected), the SARC, SAPR VA, or healthcare provider is not under any obligation or duty to inform investigators or commanders about this report and will not produce the report or disclose the communications surrounding the report. If commanders or law enforcement ask about the report, disclosures can only be made in accordance with exceptions to the MRE 514 or MRE 513 privilege, as applicable.

(4) *Disclosure of confidential communications.* In cases where a victim elects Restricted Reporting, the SARC, SAPR VA, and healthcare personnel may not disclose confidential communications or the SAFE and the accompanying Kit to DoD law enforcement or command authorities, either within or outside the DoD, except as provided in this part. In certain situations, information about a sexual assault may come to the commander's or DoD law enforcement official's (to include MCIO's) attention from a source independent of the Restricted Reporting avenues and an independent investigation is initiated. In these cases, a SARC, SAPR VA, and healthcare personnel are prevented from disclosing confidential communications under Restricted Reporting, unless an exception applies. An independent investigation does not, in itself, convert the Restricted Report to an Unrestricted Report. Thus, a SARC, SAPR VA, or healthcare personnel in receipt of confidential communications are prohibited from disclosure in an independent investigation. Improper disclosure of confidential communications or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

* * * * *

(6) *Independent investigations.* Independent investigations are not initiated by the victim. If information about a sexual assault comes to a commander's attention from a source other than a victim (victim may have elected Restricted Reporting or where no report has been made by the victim), that commander shall immediately report the matter to an MCIO and an official (independent) investigation may be initiated based on that independently acquired information.

* * * * *

(ii) The timing of filing a Restricted Report is crucial. In order to take advantage of the Restricted Reporting option, the victim must file a Restricted Report by signing a DD Form 2910 before the SARC is informed of an ongoing independent investigation of the sexual assault.

(A) If a SARC is notified of an ongoing independent investigation and the victim has not signed a DD Form 2910 electing Restricted Report, the SARC must inform the victim that the option to file a Restricted Report is no longer available. However, all communications between the victim and the victim advocate will remain privileged except for the application of an exception to Restricted Reporting

(B) If an independent investigation begins after the victim has formally elected Restricted Reporting (by signing the DD Form 2910), the independent investigation has no impact on the victim's Restricted Report and the victim's communications and SAFE Kit remain confidential, to the extent authorized by law and DoD regulations.

(7) *Mandatory reporting laws and cases investigated by civilian law enforcement.* To the extent possible, DoD will honor the Restricted Report; however, sexual assault victims need to be aware that the confidentiality afforded their Restricted Report is not guaranteed due to circumstances surrounding the independent investigation or the SARC, in consultation with their respective staff judge advocates, determine that disclosure of personally identifiable information of the victim or alleged perpetrator is necessary to prevent or mitigate an imminent threat to health and safety of the victim or another person.

(8) *Preemption of State law to ensure confidentiality of restricted report.* Pursuant to section 1565b(b)(3) of title 10, United States Code, as amended by Section 536 of Public Law 114–92, a member of the armed forces, or a dependent of a member, who is the victim of a sexual assault may elect to confidentially disclose the details of the assault to a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, or healthcare personnel as defined in DoD regulations, receive medical treatment, legal assistance or counseling, without initiating an official investigation of the allegations. Any state or local law or regulation that would requires an individual who is a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, or individual within the definition of healthcare personnel to disclose the personally identifiable information of the adult victim or alleged perpetrator of the sexual assault to a state or local law enforcement agency shall not apply, except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of the victim or another person, as determined by an authorized Department of Defense official.

(b) *Initiating medical care and treatment upon receipt of report.* Healthcare personnel will initiate the emergency care and treatment of sexual assault victims, notify the SARC or the SAPR VA in accordance with § 105.11, and make appropriate medical referrals for specialty care, if indicated. Upon receipt of a Restricted Report, only the SARC or the SAPR VA will be notified. There will be no report to DoD law enforcement, a supervisory official, or the victim's chain of command by the healthcare personnel, unless an exception to Restricted Reporting applies or applicable law requires other officials to be notified. Regardless of whether the victim elects Restricted or Unrestricted Reporting, confidentiality of medical information will be maintained in accordance with applicable laws and regulations.

* * * * *

(d) *Reports and commanders*—(1) *Unrestricted reports to commanders.* The SARC shall provide the installation commander and the immediate commander of the sexual assault victim (if a civilian victim, then the immediate commander of alleged military offender) with information regarding all Unrestricted Reports within 24 hours of an Unrestricted Report of sexual assault. This notification may be extended by the commander to 48 hours after the Unrestricted Report of the incident when there are extenuating circumstances in deployed environments. SARC and SAPR VA communications with victims are protected under the MRE 514 privilege. For Unrestricted Reports, the 8-day incident report will be filed in accordance with section 1743 of Public Law 113–66.

(2) *Restricted reports to commanders*. For the purposes of public safety and command responsibility, in the event of a Restricted Report, the SARC shall report non-PII concerning sexual assault incidents (without information that could reasonably lead to personal identification of the victim or the alleged assailant (see exception in § 105.8(e)(2)(ii)) only to the installation commander within 24 hours of the report. This notification may be extended by the commander to 48 hours after the Restricted Report of the incident when there are extenuating circumstances in deployed environments. To ensure oversight of victim services for Restricted Report cases, the SARC will also confirm in her or his report that the victim has been offered SAPR advocacy services, an explanation of the notifications in the DD Form 2910; medical and mental healthcare and informed of his or her eligibility for an SVC/VLC. The 8-day incident report is not required for Restricted Reports in accordance with section 1743 of Public Law 113–66. SARC and SAPR VA communications with victims are protected by the Restricted Reporting option and the MRE 514 privilege, U.S. Department of Defense, Manual for Courts-Martial, United States.

(i) Even if the victim chooses not to convert to an Unrestricted Report, or provide PII, the non-PII information provided by the SARC makes the installation commander aware that a sexual assault incident was reported to have occurred. Restricted Reporting gives the installation commander a clearer picture of the reported sexual assaults within the command. The installation commander can then use the information to enhance preventive measures, to enhance the education and training of the command's personnel, and to scrutinize more closely the organization's climate and culture for contributing factors.

(ii) Neither the installation commander nor DoD law enforcement may use the information from a Restricted Report for investigative purposes or in a manner that is likely to discover, disclose, or reveal the identities of the victims unless an exception to Restricted Reporting applies. Improper disclosure of Restricted Reporting information may result in disciplinary action or other adverse personnel or administrative actions.

(e) * * *

(2) The following exceptions to the prohibition against disclosures of Restricted Reporting authorize a disclosure of a Restricted Report only when the SJA consultation described as provided in paragraphs (f) and (g) of this section has occurred and only if one or more of the following conditions apply:

* * * * *

(ii) Disclosure of the personally identifiable information of the military victim or their adult dependent is necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person. For example, multiple reports involving the same alleged offender (repeat offender) could meet this criterion. See similar safety and security exceptions in MRE 514, U.S. Department of Defense, Manual for Courts-Martial, United States.

(iii) Required for fitness for duty or disability determinations. This disclosure is limited to only the information necessary to process duty or disability determinations for Service members. Disclosure of a Restricted Report under these circumstances does not change the nature of the victim's Restricted Report, nor does it create an obligation for reporting to law enforcement or command for investigation.

* * * * *

(4) The SARC or SAPR VA shall inform the victim when a disclosure in accordance with the exceptions in this section is made. Whenever possible, the victim should be notified in advance of the disclosure.

(5) If a SARC, SAPR VA, or healthcare personnel make an unauthorized disclosure of a confidential communication, that person is subject to disciplinary action. Unauthorized disclosure has no impact on the status of the Restricted Report. All Restricted Reporting information is still confidential and protected, to the extent authorized by law and this part. However, unauthorized or inadvertent disclosures made to a commander or law enforcement shall result in notification to the MCIO.

* * * * *

(g) Resources for victims to report retaliation, reprisal, ostracism, maltreatment, sexual harassment, or to request an expedited/safety transfer or military protective order (MPO)/civilian protective order (CPO). SARCs and SAPR VAs must inform victims of the resources available to report instances of retaliation, reprisal, ostracism, maltreatment, sexual harassment, or to request a transfer or MPO. If the allegation is criminal in nature and the victim filed an Unrestricted Report, the crime should be immediately reported to an MCIO, even if the crime is not something normally reported to an MCIO (*e.g.*, victim's personal vehicle was defaced). Victims can seek assistance on how to report allegations by requesting assistance from:

(1) A SARC or SAPR VA or SVC/VLC.

(2) A SARC on a different installation, which can be facilitated by the Safe Helpline.

(3) Their immediate commander.

(4) A commander outside their chain of command.

(5) Service personnel to invoke their Service-specific reporting procedures regarding such allegations in accordance with AD 2014/AFI 36–2909/SECNAVINST 5370.7D.

(6) Service Military Equal Opportunity (MEO) representative to file a complaint of sexual harassment.

(7) A G/FO if the retaliation, reprisal, ostracism, or maltreatment involves the administrative separation of victims within 1 year of the final disposition of their sexual assault case. A victim may request that the G/FO review the separation in accordance with DoDI 1332.14 (enlisted personnel) or DoDI 1332.30 (commissioned officers).

(8) A G/FO if the victim believes that there has been an impact on their military career because they reported a sexual assault or sought mental health treatment for sexual assault that the victim believes is associated with the sexual assault. The victim may discuss the impact with the G/FO.

(9) An SVC or VLC, trial counsel and VWAP, or a legal assistance attorney to facilitate reporting with a SARC or SAPR VA.

(10) Service personnel to file a complaint of wrongs in accordance with Article 138 of the UCMJ (section 938 of title 10 U.S.C.)

(11) IG DoD, invoking whistle-blower protections in accordance with DoDD 7050.06.

(12) Commander or SARC to request an Expedited Transfer.

(13) Commander or SARC to request a safety transfer or an MPO and/or CPO, if the victim is in fear for her or his safety.

(14) The MCIO, if the allegation is of an act that is criminal in nature and the victim filed an Unrestricted Report. The allegation should immediately be reported to an MCIO.

■ 9. Revise § 105.9 to read as follows:

§ 105.9 Commander and management SAPR procedures.

(a) *SAPR management.* Commanders, supervisors, and managers at all levels are responsible for the effective implementation of the SAPR program and policy. Military and DoD civilian officials at each management level shall advocate a strong SAPR program, and provide education and training that shall enable them to prevent and appropriately respond to incidents of sexual assault.

(b) *Installation commander SAPR response procedures.* Each installation commander shall:

(1) Develop guidelines to establish a 24 hour, 7 day per week sexual assault response capability for their locations, including deployed areas. For SARCs that operate within deployable commands that are not attached to an installation, senior commanders of the deployable commands shall ensure that equivalent SAPR standards are met. All SARCs will have direct and unimpeded contact and access to the installation commander (see § 105.3), and the immediate commander of both the Service member victim and alleged Service member offender. The installation commander will have direct contact with the SARC; this responsibility will not be delegated.

(2) Require all supervisors, officer and enlisted, down to the most junior supervisor, to receive specialized training that explains:

(i) That all personnel in the victim's chain of command, officer and enlisted, are required when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment to take appropriate measures to protect the victim.

(ii) What constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with AD 2014–20/AFI–36–2909/SECNAVINST 53.7D, and Military Whistleblower Protections and procedures for reporting allegations of reprisal in accordance with DoDD 7050.06.

(iii) The resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, or sexual harassment or to request a transfer or MPO.

(iv) That victims who reported a sexual assault or sought mental health treatment for sexual assault have the opportunity to discuss issues related to their military career with the G/FO that the victim believes are associated with the sexual assault.

(3) Ensure that a safety assessment will be available to all Service members, adult military dependents, and civilians who are eligible for SAPR services, even if the victim is not physically located on the installation.

(i) Identify installation personnel who have been trained and are able to perform a safety assessment of each sexual assault victim, regardless of whether he or she filed a Restricted or Unrestricted Report. Individuals tasked to conduct safety assessments must occupy positions that do not compromise the victim's reporting options.

(ii) The safety assessment will be conducted as soon as possible.

(c) *Commander SAPR response procedures.* Each commander shall:

(1) Respond appropriately to incidents of sexual assault. Use the "Commander's 30-Day Checklist for Unrestricted Reports" to facilitate the response to the victim and an alleged offender, and an appropriate response for a sexual assault within a unit. The "Commander's 30-Day Checklist for Unrestricted Reports" is located in the SAPR Policy Toolkit, on *www.sapr.mil.* This 30-Day checklist maybe expanded by the Military Services to meet Service-specific requirements and procedures.

(2) Meet with the SARC within 30 days of taking command for one-on-one SAPR training. The training shall include a trends brief for unit and area of responsibility, the confidentiality and "official need to know" requirements for both Unrestricted and Restricted Reporting, the requirements of 8-day incident report in accordance with section 1743 of Public Law 113–66. The Sexual Assault Incident Response Oversight Report template is located in the SAPR Policy Toolkit, on *www.sapr.mil.* The commander must contact the judge advocate for training on the MRE 514 privilege.

(3) Require the SARC to:

(i) Be notified of every incident of sexual assault involving Service members or persons covered in this part, in or outside of the military installation when reported to DoD personnel. When notified, the SARC or SAPR VA shall respond to offer the victim SAPR services. All SARCs shall be authorized to perform VA duties in accordance with service regulations, and will be acting in the performance of those duties.

(A) In Restricted Reports, the SARC shall be notified by the healthcare personnel in accordance with § 105.11 or the SAPR VA.

(B) In Unrestricted Reports, the SARC shall be notified by the DoD responders or healthcare personnel.

(ii) Provide the victim's installation commander and immediate commander the information regarding an Unrestricted Report within 24 hours of an Unrestricted Report of sexual assault.

(iii) If the victim is a civilian and the alleged offender is a Service member, the immediate commander of that Service member shall be provided relevant information, to include any SAPR services made available to the civilian. The MCIO provides the commander of the alleged offender with information, to the extent available, regarding the victim, and SAPR services offered, if any, to file the 8-day incident report in accordance with section 1743 of Public Law 113–66.

(iv) Provide the installation commander with non-PII, as defined in § 105.3, within 24 hours of a Restricted Report of sexual assault. This notification may be extended to 48 hours after the report of the incident if there are extenuating circumstances in the deployed environment. Command and installation demographics shall be taken into account when determining the information to be provided. To ensure oversight of victim services for Restricted Report cases, the SARC will confirm in his or her report that the victim has been offered SAPR advocacy services; received explanation of the notifications in the DD Form 2910; offered medical and mental health care; and informed of eligibility for a Special Victim's Counsel or Victim's Legal Counsel. An 8-day incident report is not required for Restricted Reports in accordance with section 1743 of Public Law 113–66.

(v) Be supervised and evaluated by the installation commander or deputy installation commander in the performance of SAPR procedures in accordance with § 105.10.

(vi) Receive SARC training to follow procedures in accordance with § 105.10. Upon implementation of the D–SAACP, standardized criteria for the selection and training of SARCs and SAPR VAs shall include the application criteria in DD Form 2950 and comply with specific Military Service guidelines and certification requirements.

(vii) Follow established procedures to store the DD Form 2910 pursuant to Military Service regulations regarding the storage of documents with PII.

Follow established procedures to store the original DD Form 2910 and ensure that all Federal and Service privacy regulations are adhered to.

(4) Evaluate healthcare personnel pursuant to Military Service regulation in the performance of SAPR procedures as described in § 105.11.

(5) Require adequate supplies of SAFE Kits be maintained by the active component. The supplies shall be routinely evaluated to guarantee adequate numbers to meet the need of sexual assault victims.

(6) Require DoD law enforcement and healthcare personnel to comply with prescribed chain of custody procedures described in their Military Service-specific MCIO procedures. Modified procedures applicable in cases of Restricted Reports of sexual assault are explained in § 105.12.

(7) Require that a CMG is conducted on a monthly basis in accordance with § 105.13.

(i) Chair or attend the CMG, in accordance with the requirements of § 105.13. Direct the required CMG members to attend.

(ii) Commanders shall provide victims of a sexual assault who filed an Unrestricted Reports monthly updates regarding the current status of any ongoing investigative, medical, legal, status of an Expedited Transfer request or any other request made by the victim, or command proceedings regarding the sexual assault until the final disposition (see § 105.3) of the reported assault, and to the extent permitted pursuant to DoDI 1030.2, Public Law 104–191,[6] and section 552a of title 5, U.S.C. This is a non-delegable commander duty. This update must occur within 72 hours of the last CMG. Commanders of NG victims who were sexually assaulted when the victim was on title 10 orders and filed Unrestricted Reports are required to update, to the extent allowed by law and regulations, the victim's home State title 32 commander as to all or any ongoing investigative, medical, and legal proceedings and of any actions being taken by the active component against subjects who remain on title 10 orders.

(8) Ensure that resolution of Unrestricted Report sexual assault cases shall be expedited.

(i) A unit commander who receives an Unrestricted Report of a sexual assault shall immediately refer the matter to the appropriate MCIO, to include any offense identified by the UCMJ. A unit commander shall not conduct internal command directed investigations on sexual assault (*i.e.,* no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

(ii) The final disposition of a sexual assault shall immediately be reported by the accused's commander to the assigned MCIO. Dispositions on cases referred by MCIOs to other DoD law enforcement agencies shall be immediately reported to the MCIOs upon their final disposition. When requested by MCIOs, commanders shall provide final disposition of sexual assault cases. Service legal officers are responsible for entering and approving the final case disposition input into DSAID and notifying the SARC of the disposition results.

(9) Appoint a point of contact to serve as a formal liaison between the installation SARC and the installation FAP staff (or civilian domestic resource if FAP is not available for a Reserve Component victim) to direct coordination when a sexual assault occurs within a domestic relationship or involves child abuse.

(10) Ensure appropriate training of all military responders be directed and documented in accordance with training standards in § 105.14. Direct and document appropriate training of all military responders who attend the CMG.

(11) Identify and maintain a liaison with civilian sexual assault victim resources. Where necessary, it is strongly recommended that an MOU or MOAs with the appropriate local authorities and civilian service organizations be established to maximize cooperation, reciprocal reporting of sexual assault information, and consultation regarding jurisdiction for the prosecution of Service members involved in sexual assault, as appropriate.

(12) In accordance with section 1565b(a)(2) of title 10 U.S.C., a Service member or a dependent who is the victim of sexual assault shall be informed of the availability of legal assistance and the services of a SARC and SAPR VA as soon as the member or dependent seeks assistance from a SARC, a SAPR VA, an MCIO, a victim or witness liaison, or a trial counsel. The member or dependent shall also be informed that the legal assistance and the services of a SARC or a SAPR VA are optional and may be declined, in whole or in part, at any time.

(13) Direct that DoD law enforcement not affiliated with an MCIO, when applicable, and VWAP personnel provide victims of sexual assault who elect an Unrestricted Report the information outlined in DoDD 1030.01[7] and Public Law 100–504[8] throughout the investigative and legal process. The completed DD Form 2701 shall be distributed to the victim in Unrestricted Reporting cases by DoD MCIO in accordance with DoDI 5505.18.

(14) Require that investigation descriptions found in § 105.17 be used to report case dispositions.

(15) Establish procedures to protect Service member victims and/or their dependents, SARCs, SAPR VAs, witnesses, healthcare providers, bystanders, and others associated with a report of sexual assault allegation from retaliation, reprisal, ostracism, and maltreatment.

(i) Protect victims of sexual assault from retaliation, ostracism, maltreatment, and reprisal in accordance with DoDD 7050.06 and AD 2014–20/AFI 36–2909/SECNAVINST 5370.7D. Require the SARC or SAPR VA to inform victims of the resources, listed in § 105.8, to report instances of retaliation, reprisal, ostracism, maltreatment, or sexual harassment or to request a transfer or MPO and/or CPO or to consult with an SVC/VLC.

(ii) Require SARCs and SAPR VAs to advise victims who reported a sexual assault or sought mental health treatment for sexual assault that they have the opportunity to discuss issues related to their military career with a G/FO that the victim believes are associated with the sexual assault.

(16) Require that sexual assault reports be entered into DSAID through interface with a MCIO case management systems, or by direct data entry by authorized personnel.

(17) Designate an official, usually the SARC, to generate an alpha-numeric Restricted Reporting case number (RRCN).

(18) Appoint a healthcare provider, as an official duty, in each MTF to be the resident point of contact concerning SAPR policy and sexual assault care.

(19) Submit an 8-day incident report in writing after an Unrestricted Report of sexual assault has been made in accordance with section 1743 of Public Law 113–66. The 8-day incident report will only be provided to personnel with an official need to know.

(d) *MOUs or MOAs with local civilian authorities.* The purpose of MOUs and MOAs is to:

(1) Enhance communications and the sharing of information regarding sexual assault prosecutions, as well as of the sexual assault care and forensic

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[6] Available: *http://www.gpo.gov/fdsys/pkg/PLAW-104publ191/pdf/PLAW-104publ191.pdf.*

[7] Available: *http://www.dtic.mil/whs/directives/corres/pdf/103001p.pdf.*

[8] Available: *http://ntl.bts.gov/DOCS/iga.html.*

examinations that involve Service members and eligible TRICARE beneficiaries covered by this part.

(2) Collaborate with local community crisis counseling centers, as necessary, to augment or enhance their sexual assault programs.

(3) Provide liaison with private or public sector sexual assault councils, as appropriate.

(4) Provide information about medical and counseling services related to care for victims of sexual assault in the civilian community, when not otherwise available at the MTFs, in order that military victims may be offered the appropriate healthcare and civilian resources, where available and where covered by military healthcare benefits.

(5) Where appropriate or required by MOU or MOA, facilitate training for civilian service providers about SAPR policy and the roles and responsibilities of the SARC and SAPR VA.

(e) *Line of duty (LOD) procedures.* (1) Members of the Reserve Components, whether they file a Restricted or Unrestricted Report, shall have access to medical treatment and counseling for injuries and illness incurred from a sexual assault inflicted upon a Service member when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training.

(2) Medical entitlements remain dependent on a LOD determination as to whether or not the sexual assault incident occurred in an active service or inactive duty training status. However, regardless of their duty status at the time that the sexual assault incident occurred, or at the time that they are seeking SAPR services (see § 105.3), Reserve Component members can elect either the Restricted or Unrestricted Reporting option (see 32 CFR 103.3) and have access to the SAPR services of a SARC and a SAPR VA.

(3) Any alleged collateral misconduct by a Service member victim associated with the sexual assault incident will be excluded from consideration as intentional misconduct or gross negligence under the analysis required by section 1074a(c) of title 10 U.S.C. in LOD findings for healthcare to ensure sexual assault victims are able to access medical treatment and mental health services.

(4) The following LOD procedures shall be followed by Reserve Component commanders.

(i) To safeguard the confidentiality of Restricted Reports, LOD determinations may be made without the victim being identified to DoD law enforcement or command, solely for the purpose of enabling the victim to access medical care and psychological counseling, and without identifying injuries from sexual assault as the cause.

(ii) For LOD determinations for sexual assault victims, the commander of the Reserve command in each component and the directors of the Army and Air NG shall designate individuals within their respective organizations to process LODs for victims of sexual assault when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training.

(A) Designated individuals shall possess the maturity and experience to assist in a sensitive situation, will have SAPR training, so they can appropriately interact with sexual assault victims, and if dealing with a Restricted Report, to safeguard confidential communications and preserve a Restricted Report (*e.g.* SARCs and healthcare personnel). These individuals are specifically authorized to receive confidential communications as defined by § 105.3 for the purpose of determining LOD status.

(B) The appropriate SARC will brief the designated individuals on Restricted Reporting policies, exceptions to Restricted Reporting, and the limitations of disclosure of confidential communications as specified in § 105.8(e). The SARC and these individuals, or the healthcare provider may consult with their servicing legal office, in the same manner as other recipients of privileged information for assistance, exercising due care to protect confidential communications in Restricted Reports by disclosing only non-identifying information. Unauthorized disclosure may result in disciplinary action.

(iii) For LOD purposes, the victim's SARC may provide documentation that substantiates the victim's duty status as well as the filing of the Restricted Report to the designated official.

(iv) If medical or mental healthcare is required beyond initial treatment and follow-up, a licensed medical or mental health provider must recommend a continued treatment plan.

(v) Reserve Component members who are victims of sexual assault may be retained or returned to active duty in accordance with Table 1 of this section and section 12323 of title 10 U.S.C.

(A) A request described in Table 1 of this section submitted by a Reserve Component member must be answered with a decision within 30 days from the date of the request, in accordance with Public Law 112–239.

(B) If the request is denied, the Reserve Component member may appeal to the first G/FO in his or her chain of command. A decision must be made on that appeal within 15 days from the date of the appeal, in accordance with Public Law 112–239.

TABLE 1—RETENTION OR RETURN TO ACTIVE DUTY OF RESERVE COMPONENT MEMBERS FOR LOD DETERMINATIONS TO ENSURE CONTINUITY OF CARE

If a member of the Reserve Component . . .		Then . . .
Is expected to be released from active duty before the determination is made regarding whether he or she was assaulted while in the LOD in accordance with section 12323 of title 10, U.S.C.	And the sexual assault was committed while he or she was on active duty.	The Secretary concerned, upon the member's request, may order him or her to be retained on active duty until the LOD determination.
Is not on active duty and the LOD determination is not completed.		The Secretary concerned, upon the member's request, may order him or her to be recalled to active duty for such time as necessary for completion of the LOD determination. A member eligible for this retention or recall shall be informed as soon as practicable after the alleged assault of the option to request continuation on active duty for the LOD.

(f) *Expedited victim transfer requests.* (1) Any threat to life or safety of a Service member shall be immediately reported to command and DoD law enforcement authorities (see § 105.3) and a request to transfer the victim under these circumstances will be handled in accordance with established Service regulations.

(i) Safety issues are not handled through an Expedited Transfer. They are handled through a fast safety move following applicable DoD and Service-specific procedures. (An Expedited Transfer may take longer than a safety move.)

(ii) The intent behind the Expedited Transfer policy in this section is to address situations where a victim feels safe, but uncomfortable. An example of where a victim feels uncomfortable is where a victim may be experiencing ostracism and retaliation. The intent behind the Expedited Transfer policy is to assist in the victim's recovery by moving the victim to a new location, where no one knows of the sexual assault.

(2) Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC, SAPR VA, or the Service member's CO, or civilian supervisor equivalent (if applicable) at the time of making the report, or as soon as practicable, of the option to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned command or installation in accordance with section 673 of title 10, U.S.C. The Service members shall initiate the transfer request and submit the request to their COs. The CO shall document the date and time the request is received.

(i) A presumption shall be established in favor of transferring a Service member (who initiated the transfer request) following a credible report (see § 105.3) of sexual assault. The CO, or the appropriate approving authority, shall make a credible report determination at the time the expedited request is made after considering the advice of the supporting judge advocate, or other legal advisor concerned, and the available evidence based on an MCIO's investigation's information (if available). If the Expedited Transfer is disapproved because there was no credible report, the grounds on which it was disapproved must be documented. A commander can always transfer a victim on other grounds, *e.g.*, on humanitarian grounds, through a process outside of the Expedited Transfer process.

(ii) Expedited transfers of Service members who report that they are victims of sexual assault shall be limited to sexual assault offenses reported in the form of an Unrestricted Report.

(A) Sexual assault against adults is defined in 32 CFR 103.3 and includes rape and sexual assault in violation of Article 120, of the UCMJ (section 920 of title 10 U.S.C.) and forcible sodomy in violation of Article 125, of the UCMJ (section 925 of title 10 U.S.C.). This part does not address victims covered under the FAP.

(B) If the Service member files a Restricted Report in accordance with 32 CFR part 103 and requests an expedited transfer, the Service member must affirmatively change his or her reporting option to Unrestricted Reporting on the DD Form 2910, in order to be eligible for an expedited transfer.

(iii) When the alleged perpetrator is the commander or otherwise in the victim's chain of command, the SARC shall inform such victims of the opportunity to go outside the chain of command to report the offense to MCIOs, other COs or an Inspector General. Victims shall be informed that they can also seek assistance from a legal assistance attorney, the DoD Safe Helpline, or an SVC/VLC. The relationship between an SVC/VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client, in accordance with section 1044e of title 10 U.S.C.

(iv) The CO shall expeditiously process a transfer request from a command or installation, or to a different location within the command or installation. The CO shall request and take into consideration the Service member's input before making a decision involving a temporary or permanent transfer and the location of the transfer. If approved, the transfer orders shall also include the Service member's dependents (if accompanied) or military spouse (if the military spouse consents). In most circumstances, transfers to a different installation should be completed within 30 calendar days from the date the transfer is approved. Transfers to a new duty location that do not require a change of station move should be completed within 1 week from the date the transfer is approved.

(v) The CO must approve or disapprove a Service member's request for a PCS, PCA, or unit transfer within 72 hours from receipt of the Service member's request. The decision to approve the request shall be immediately forwarded to the designated activity that processes PCS, PCA, or unit transfers (see § 105.3).

(vi) If the Service member's transfer request is disapproved by the CO, the Service member shall be given the opportunity to request review by the first G/FO in the chain of command of the member, or a SES equivalent (if applicable). The decision to approve or disapprove the request for transfer must be made within 72 hours of submission of the request for review. If a civilian SES equivalent reviewer approves the transfer, the Secretary of the Military Department concerned shall process and issue orders for the transfer. All transfer requests must be reported in the Services' and NGB Annual Program Review submission; to include all disapproved transfer requests, and the reason for disapproval.

(vii) Military Departments shall make every reasonable effort to minimize disruption to the normal career progression of a Service member who reports that he or she is a victim of a sexual assault.

(viii) Expedited transfer procedures require that a CO or the appropriate approving authority make a determination and provide his or her reasons and justification on the transfer of a Service member based on a credible report of sexual assault. A CO shall consider:

(A) The Service member's reasons for the request.

(B) Potential transfer of the alleged offender instead of the Service member requesting the transfer.

(*1*) Commanders have the authority to make a timely determination and to take action regarding whether a Service member who is alleged to have committed or attempted to commit a sexual assault offense should be temporarily reassigned or removed from a position of authority or from an assignment. This reassignment or removal must be taken not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the member's unit in accordance with section 674 of title 10 U.S.C.

(*2*) This determination may be made at any time after receipt of notification of an Unrestricted Report of a sexual assault that identifies the Service member as an alleged perpetrator.

(C) Nature and circumstances of the offense.

(D) Whether a temporary transfer would meet the Service member's needs and the operational needs of the unit.

(E) Training status of the Service member requesting the transfer.

(F) Availability of positions within other units on the installation.

(G) Status of the investigation and potential impact on the investigation and future disposition of the offense, after consultation with the investigating MCIOs.

(H) Location of the alleged offender.

(I) Alleged offender's status (Service member or civilian).

(J) Other pertinent circumstances or facts.

(ix) Service members requesting the transfer shall be informed that they may have to return for the prosecution of the case, if the determination is made that prosecution is the appropriate action.

(x) Commanders shall directly counsel the Service member to ensure that he or she is fully informed regarding:

(A) Reasonably foreseeable career impacts.

(B) The potential impact of the transfer or reassignment on the investigation and case disposition or the initiation of other adverse action against the alleged offender.

(C) The effect on bonus recoupment, if any.

(D) Other possible consequences of granting the request.

(xi) When an Expedited Transfer is approved, notification from the losing commander to the gaining commander will depend on whether there is an open case and continuation of services. If there is neither an open case nor continuation of services, no other action is needed. If there is an open case and services are requested, then notification to the gaining commander will occur to facilitate the investigation and access to services. This procedure applies to any sexual assault victim move (*e.g.*, permanent change of station either on or before the member's normal rotation date, temporary duty inside or out of local area).

(A) When an Expedited Transfer is approved, the losing commander will not inform the gaining commander of the sexual assault incident unless one of the following applies:

(*1*) Active criminal investigation.

(*2*) Active legal proceeding.

(*3*) Ongoing victim healthcare (medical or mental health) needs that are directly related to the sexual assault.

(*4*) Ongoing monthly CMG oversight involving the victim or

(*5*) Active SAPR victim support services.

(B) When an Expedited Transfer is approved, the losing commander will inform the gaining commander of the inbound Expedited Transfer if any of the circumstances outlined in paragraph (f)(2)(xi)(A) of this section are occurring. The losing commander will limit the information given to objective facts about victim care provided, status of open investigations, and the status of ongoing legal proceedings in order to provide the gaining commander with some context for victim behavior and to facilitate the victim's access to advocacy, healthcare, MCIOs, and legal counsel.

(*1*) SARC or SAPR VA case documents will not be transferred to the gaining SARC without consent from the victim.

(*2*) The receiving commander will adopt processes to assure strict confidentiality. Only the immediate commander of the victim will be notified. The immediate commander may share the notification with the senior enlisted advisor, if deemed necessary to support the victim. All information shall be kept confidential to the extent authorized by law. Additional personnel will be notified by the commander only if they have direct input to the monthly Case Management Group meeting. Every attempt must be made to limit access to the information that a victim has been transferred into the unit as a result of a sexual assault report.

(xii) If a victim transfers from the installation, then the processes in Table 2 of this section apply as appropriate.

TABLE 2—VICTIM TRANSFER PROCESSES

If	Then
• The victim does NOT seek continued services of a SARC or SAPR VA at the new location, and • The investigation or legal proceeding is ongoing at the original installation:	• The CMG responsibility remains with the original installation's CMG chair. • The victim will be asked if she or he would like to receive the monthly update from the CMG meetings. • If the victim wants the CMG updates, then the victim's new commander will participate in person or call in to the CMG meetings and this call in will be documented in the minutes of the CMG. • The new commander will provide the victim a monthly update of her or his case within 72 hours of the last CMG.
The victim DOES seek SAPR services at the new location:	• The advocacy responsibility transfers to the receiving SARC at the victim's new installation (if the victim consents to seek SAPR services at new location), and then the CMG responsibility may transfer to the new location. • If the CMG does transfer to the location of the victim, then the MCIOs at the original installation (if there is an ongoing investigation) and the legal officer at the original installation (if there are ongoing legal proceedings) are required to call in to the CMG. This MCIO and legal officer call-in will be documented in the CMG notes
• The victim seeks SAPR services at the new location, and	• The SARC at the new location must call in to the CMG meeting at the original location to report on victim services and any safety or retaliation-related issues. This SARC call-in will be documented in the CMG notes.
• The Military Service determines that the CMG should stay at the original installation:	• The victim's new commander must also call in to the CMG meeting and must provide the victim a monthly update of her or his case within 72 hours of the last CMG.

(xiii) Require that expedited transfer procedures for Reserve Component members, Army NG, and Air NG members who make Unrestricted Reports of sexual assault be established by commanders within available resources and authorities. If requested by the Service member, the command should allow for separate training on different weekends or times from the alleged offender or with a different unit in the home drilling location to ensure undue burden is not placed on the Service member and his or her family by the transfer. Potential transfer of the alleged offender instead of the Service member should also be considered. At a minimum, the alleged offender's access to the Service member who made the Unrestricted Report shall be controlled, as appropriate.

(xiv) Even in those court-martial cases in which the accused has been acquitted, the standard for approving an expedited transfer still remains whether a credible report has been filed. The commander shall consider all the facts and circumstances surrounding the case and the basis for the transfer request.

(g) *Military protective orders (MPO).* In Unrestricted Reporting cases, commanders shall execute the following procedures regarding MPOs:

(1) Require the SARC or the SAPR VA to inform sexual assault victims protected by an MPO, in a timely manner, of the option to request transfer from the assigned command in accordance with section 567(c) of Public Law 111–84.

(2) Notify the appropriate civilian authorities of the issuance of an MPO and of the individuals involved in the order, in the event an MPO has been issued against a Service member and any individual involved in the MPO does not reside on a military installation at any time during the duration of the MPO pursuant to Public Law 110–417.

(i) An MPO issued by a military commander shall remain in effect until such time as the commander terminates the order or issues a replacement order.

(ii) The issuing commander shall notify the appropriate civilian authorities of any change made in a protective order, or its termination, in accordance with Section 561, 562, and 563 of Public Law 110–417, "Duncan Hunter National Defense Authorization Act Fiscal Year 2009.

(iii) When an MPO has been issued against a Service member and any individual involved in the MPO does not reside on a military installation at any time during the duration of the MPO, notify the appropriate civilian authorities of the issuance of an MPO and of the individuals involved in the order. The appropriate civilian authorities shall include, at a minimum, the local civilian law enforcement agency or agencies with jurisdiction to respond to an emergency call from the residence of any individual involved in the order.

(3) Military commanders will, through their installation law enforcement agency, place an active MPO in the National Crime Information Center (NCIC) for the duration of the order. Installation law enforcement will initiate a police report for the MPO, creating the required Originating Agency Case Number, and place the MPO in the NCIC Protective Order File, using Protection Order Conditions (PCO) Field Code 08 with the following mandatory caveat in the miscellaneous field: "This is a military protective order and may not be enforceable by non-military authorities. If subject is in possible violation of the order, advise the entering agency (military law enforcement)."

(4) Advise the person seeking the MPO that the MPO is not enforceable by civilian authorities off base and that victims desiring protection off base should seek a civilian protective order (CPO). Off base violations of the MPO should be reported to the issuing commander, DoD law enforcement, and the relevant MCIO for investigation.

(i) Pursuant to section 1561a of Public Law 107–311[9], a CPO shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order. Commanders, MCIOs, and installation DoD law enforcement personnel shall take all reasonable measures necessary to ensure that a CPO is given full force and effect on all DoD installations within the jurisdiction of the court that issued such order.

(ii) If the victim has informed the SARC of an existing CPO, a commander shall require the SARC to inform the CMG of the existence of the CPO and its requirements. After the CPO information is received at the CMG, DoD law enforcement agents shall be required to document CPOs for all Service members in their investigative case file, to include documentation for Reserve Component personnel in title 10 status.

(5) MPOs in cases other than sexual assault matters may have separate requirements.

(6) The issuing commanders will fill out the DD Form 2873, "Military Protective Order (MPO)," and is required to provide victim(s) and alleged offender(s) with copies of the completed form. Verbal MPOs can be issued, but need to be subsequently documented with a DD Form 2873, as soon as possible.

(7) Require DoD law enforcement agents document MPOs for all Service members in their investigative case file, to include documentation for Reserve Component personnel in title 10 status. The appropriate DoD law enforcement agent representative to the CMG shall brief the CMG chair and co-chair on the existence of an MPO.

(8) If the commander's decision is to deny the MPO request, document the reasons for the denial. Denials of MPO requests go to the installation commander or equivalent command level (in consultation with a judge advocate) for the final decision.

(i) The number of MPO(s) issued, to include violations, must be included in the Services' and NGB Annual Program Review submission, as required by Public Law 111–84.

(ii) [Reserved]

(h) *Collateral misconduct in sexual assault cases.* (1) Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (*e.g.,* underage drinking or other related alcohol offenses, adultery, fraternization, or other violations of certain regulations or orders). Commanders shall have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and shall not be penalized for such a deferral decision), until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns.

(2) In accordance with Executive Order 13696 initial disposition authority is withheld from all commanders within the DoD who do not possess at least special court-martial convening authority and who are not in the grade of 0–6 (*i.e.,* colonel or Navy captain) or higher, with respect to the alleged offenses of rape, sexual assault, and forcible sodomy; all attempts to commit such offenses, in violation of Articles 120, 125, and 80 of the UCMJ (sections 920, 925, and 880 of title 10, U.S.C.); and all other alleged offenses arising from or relating to the same incident, whether committed by the alleged offender or alleged to have been committed by the sexual assault victim (collateral misconduct). Commanders may defer taking action on a victim's alleged collateral misconduct arising from or relating to the sexual assault incident until the initial disposition action for the sexual assault investigation is completed.

(3) Commanders and supervisors should take appropriate action for the victim's alleged collateral misconduct (if warranted), responding appropriately in order to encourage sexual assault

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[9] Available: *http://www.gpo.gov/fdsys/pkg/PLAW-107publ311/pdf/PLAW-107publ311.pdf.*

reporting and continued cooperation, while avoiding those actions that may further traumatize the victim. Ultimately, victim cooperation should significantly enhance timely and effective investigations, as well as the appropriate disposition of sexual assaults.

(4) Subordinate commanders shall be advised that taking action on a victim's alleged collateral misconduct may be deferred until final disposition of the sexual assault case. The Military Departments shall establish procedures so that commanders and supervisors are not penalized for deferring collateral misconduct actions for the sexual assault victim until final disposition of the sexual assault case.

(5) Commanders shall have the authority to determine, in a timely manner, how to best manage the disposition of alleged misconduct, to include making the decision to defer disciplinary actions regarding a victim's alleged collateral misconduct until after the final disposition of the sexual assault case, where appropriate. For those sexual assault cases for which the victim's alleged collateral misconduct is deferred, Military Service reporting and processing requirements should take such deferrals into consideration and allow for the time deferred to be subtracted, when evaluating whether a commander took too long to resolve the collateral misconduct.

(i) *Commander SAPR prevention procedures.* Each commander shall implement a SAPR prevention program that:

(1) Establishes prevention practice consistent with his or her Service's implementation of the "Department of Defense 2014–2016 Sexual Assault Prevention Strategy". Prevention programs will address concerns about unlawful command influence so that victims' rights are protected at the same time that the due process rights of the alleged offenders are safeguarded.

(2) Establishes a command climate of sexual assault prevention predicated on mutual respect and trust, recognizes and embraces diversity, and values the contributions of all its Service members.

(3) Emphasizes that sexual assault is a crime and violates the core values of being a professional in the Military Services and ultimately destroys unit cohesion and the trust that is essential for mission readiness and success.

(4) Emphasizes DoD and Military Service policies on sexual assault and the potential legal consequences for those who commit such crimes.

(5) Monitors the organization's SAPR climate and responds with appropriate action toward any negative trends that may emerge.

(6) Reflects feedback and modifications based on command climate surveys, which are regularly administered in accordance with section 572 of Public Law 112–239.

(7) Identifies and remedies environmental factors specific to the location that may facilitate the commission of sexual assaults (*e.g.,* insufficient lighting).

(8) Emphasizes sexual assault prevention training for all assigned personnel.

(9) Establishes prevention training that focuses on identifying the behavior of potential offenders.

(10) Identifies and utilizes community-based resources and partnerships to add depth to prevention efforts.

■ 10. Amend § 105.10 by:

■ a. Revising paragraphs (a)(2), (a)(7)(ii)(A), (a)(7)(iii), and (a)(8)(i)(A) through (C).

■ b. In paragraph (a)(8)(ii)(A), removing "the DD Form 2910 in their personal permanent records as this form" and adding in its place "the DD Form 2910 and the DD Form 2911 in their personal permanent records as these forms."

■ c. Revising paragraph (a)(8)(v) and (vi).

■ d. Removing paragraph (a)(8)(ix)(B), redesignating paragraph (a)(8)(ix)(A) as paragraph (a)(8)(ix)(B), and adding a new paragraph (a)(8)(ix)(A).

■ e. In paragraph (a)(8)(xiii), adding the words "and Service Web sites" at the end of the second sentence.

■ f. In paragraph (a)(8)(xv), adding the words "and report these observations to the installation commander" at the end of the sentence.

■ g. In paragraph (a)(8)(xx), adding "to" before "Service members" and removing "for" before "sexual assault victims".

■ h. Revising paragraph (a)(8)(xxii)(B) and adding paragraph (a)(8)(xxii)(C).

■ i. Revising paragraph (a)(8)(xxv) and adding paragraph (a)(8)(xxvi).

■ j. Revising paragraph (b)(1)(i).

■ k. In paragraph (b)(1)(iii), adding the sentence "Provide a response consistent with requirements for the SARC response in this part." at the end of the paragraph.

■ l. In paragraph (b)(1)(iv), removing "using DD Form 2909" and adding in its place "by reviewing the DD Form 2950".

The revisions read as follows:

§ 105.10 SARC and SAPR VA procedures.

(a) * * *

(2) Comply with DoD Sexual Assault Advocate Certification requirements.

* * * * *

(7) * * *

(ii) * * *

(A) There will be situations where a sexual assault victim receives medical care and a SAFE outside of a military installation under a MOU or MOA with local private or public sector entities. In these cases, pursuant to the MOU or MOA, the SARC or SAPR VA shall be notified, and a SARC or SAPR VA shall respond.

* * * * *

(iii) SARCs shall provide a response that recognizes the high prevalence of pre-existing trauma (prior to the present sexual assault incident) and empowers an individual to make informed decisions about all aspects in the reporting process and to access available resources.

* * * * *

(8) * * *

(i) * * *

(A) Assist the victim in filling out the DD Form 2910 where the victim elects to make a Restricted or Unrestricted Report. However, the victims, not the SARCs or SAPR VAs, must fill out the DD Form 2910. Explain that sexual assault victims have the right and ability to consult with a SVC/VLC before deciding whether to make a Restricted Report, Unrestricted Report, or no report at all. Additionally, the SARC or SAPR VA shall explain the eligibility requirements for an SVC/VLC, as well as the option to request SVC or VLC services even if the victim does not fall within the eligibility requirements.

(B) Inform the victim that the DD Form 2910 will be uploaded to DSAID and retained for 50 years in Unrestricted Reports. The DD Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years, in a manner that protects confidentiality.

(C) The SARC or SAPR VA shall inform the victim of any local or State sexual assault reporting requirements that may limit the possibility of Restricted Reporting. At the same time, the victims shall be briefed of the protections and exceptions to MRE 514.

* * * * *

(v) Provide the installation commander and the immediate commander of the victim (if a civilian victim, then the immediate commander of the alleged offender) with information regarding an Unrestricted Report within 24 hours of an Unrestricted Report of sexual assault. This notification may be extended to 48 hours after the Unrestricted Report of the incident if there are extenuating circumstances in the deployed environments.

(vi) Provide the installation commander with non-PII within 24 hours of a Restricted Report of sexual assault. This notification may be extended to 48 hours after the Restricted Report of the incident if there are extenuating circumstances in a deployed environment. Command and installation demographics shall be taken into account when determining the information to be provided. To ensure oversight of victim services for Restricted Report cases, the SARC will also confirm in her or his report that the victim has been offered SAPR advocacy services; received a safety assessment; received explanation of the notifications in the DD Form 2910; been offered medical and mental health care; and informed of his or her eligibility for an SVC/VLC.

* * * * *

(ix) * * *

(A) Explain the eligibility for SVC or VLC for victims filing Restricted or Unrestricted Reports, and the types of legal assistance authorized to be provided to the sexual assault victim, in accordance with section 1044e of title 10 U.S.C. Inform the victim of the opportunity to consult with legal assistance counsel and SVC or VLC as soon as the victim seeks assistance from a SARC or SAPR VA. Explain that the nature of the relationship between an SVC or VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client.

* * * * *

(xxii) * * *

(B) Maintain in DSAID an account of the services referred to and requested by the victim for all reported sexual assault incidents, from medical treatment through counseling, and from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services. Should the victim return to the SARC or SAPR VA and request SAPR services after indicating that he or she no longer desired services, the case will be reopened and addressed at the CMG meeting.

(C) A SARC will open a case in DSAID as an "Open with Limited Information" case when there is no signed DD 2910 (*e.g.,* an independent investigation or third-party report, or when a civilian victim alleged sexual assault with a Service member subject) to comply with section 563(d) of Public Law 110–417 and to ensure system accountability.

* * * * *

(xxv) Familiarize the unit commanders and supervisors of SAPR VAs with the SAPR VA roles and responsibilities, to include the "Supervisor and Commander Statement of Understanding" section in the DD Form 2950, "Department of Defense Sexual Assault Advocate Certification Program (D–SAACP) Application Packet for New Applications." The DD Form 2950 is available via the Internet at *http://www.dtic.mil/whs/directives/forms/eforms/dd2950.pdf.*

(xxvi) Offer victims the opportunity to participate in surveys asking for victim feedback on the reporting experience. Inform victims regarding what the survey will ask them and uses of the data collected.

(b) * * *

(1) * * *

(i) Comply with DoD Sexual Assault Advocate Certification requirements in D–SAACP.

* * * * *

■ 11. Amend § 105.11 by:

■ a. In paragraph (a)(1), adding the words "in accordance with § 105.14 and section 539 of Public Law 113–291" at the end of the second sentence.

■ b. Redesignating paragraphs (a)(6) through (11) as paragraphs (a)(10) through (15) and paragraphs (a)(2) through (5) as paragraphs (a)(5) through (8), and adding new paragraphs (a)(2) through (4) and (9).

■ c. Revising the last sentence of newly redesignated paragraph (a)(5).

■ d. Revising newly redesignated paragraph (a)(8).

■ e. In newly redesignated paragraph (a)(11) introductory text, removing the words "SAFE Kit" and adding in its place "SAFE."

■ f. In newly redesignated paragraph (a)(11)(i), adding the words "at no cost to them in accordance with Violence Against Women Act as explained in with U.S. Department of Justice, Office on Violence Against Women, National Protocol for Sexual Assault Medical Forensic Examinations, *Adults/Adolescents"* at the end of the second sentence.

■ g. In newly redesignated paragraph (a)(11)(ii), removing the words "SAFE Kit" and adding in its place "SAFE."

■ h. In newly redesignated paragraph (a)(12) introductory text:

■ i. Removing the words "SAFE Kit" and adding in its place "SAFE."

■ ii. Adding the words "with the exception of the special requirements to safeguard PII in Restricted SAFE Kits in § 105.12" at the end of the sentence.

■ i. In newly redesignated paragraphs (a)(12)(i) and (ii), removing the words "SAFE Kit" and adding in its place "SAFE."

■ j. In newly redesignated paragraph (a)(12)(ii), removing the word "their" and adding in its place "his or her."

■ k. Revising newly redesignated paragraph (a)(13).

■ l. In newly redesignated paragraph (a)(14)(ii) introductory text, removing the words "SAFE Kit" and adding in its place "SAFE".

■ m. In newly redesignated paragraph (a)(15), removing the words "Restricted reporting applies" and adding in its place "Restricted Reporting applies, in accordance with § 105.8".

■ n. Adding a new paragraph (a)(16).

■ o. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), and adding a new paragraph (b).

■ q. Revising newly redesignated paragraphs (e)(2) and (f)(2)(i) and (ii).

■ r. Adding paragraph (f)(3) to newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 105.11 Healthcare provider procedures.

* * * * *

(a) * * *

(2) Require that a SARC is immediately notified when a victim discloses a sexual assault so that the SARC can inform the victim of both reporting options (Restricted and Unrestricted) and all available services (*e.g.,* SVC/VLC, Expedited Transfers, Military Protective Orders, document retention mandates). The victim can then make an informed decision as to which reporting option to elect and which services to request (or none at all). The victim is able to decline services in whole or in part at any time.

(3) Require the assignment of at least one full-time sexual assault medical forensic examiner to each MTF that has an emergency department that operates 24 hours per day. Additional sexual assault medical forensic examiners may be assigned based on the demographics of the patients who utilize the MTF.

(4) In cases of MTFs that do not have an emergency department that operates 24 hours per day, require that a sexual assault forensic medical examiner be made available to a patient of the facility consistent with the U.S. Department of Justice, Office on Violence Against Women, National Protocol for Sexual Assault Medical Forensic Examinations, *Adults/Adolescents* (U.S. Department of Justice SAFE Protocol), through an MOU or MOA with local private or public sector entities and consistent with U.S. Department of Justice SAFENational Protocol for Sexual Assault Medical Forensic Examinations, Adult/Adolescent, when a determination is made regarding the patient's need for the services of a sexual assault medical forensic examiner.

(i) The MOU or MOA will require that a SARC be notified and that SAFE Kits be collected in accordance with § 105.12.

(ii) When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirements for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit.

(5) * * * In addition, verify that as part of the MOU or MOA, a SARC or SAPR VA is notified, and responds and meets with the victim in a timely manner.

* * * * *

(8) Require that the SARC be notified of all incidents of sexual assault in accordance with sexual assault reporting procedures in § 105.8.

(9) Require processes be established to support coordination between healthcare personnel and the SARC and SAPR VA. If a victim initially seeks assistance at a medical facility, SARC notification must not delay emergency care treatment of a victim.

* * * * *

(13) Publicize availability of healthcare (to include mental health), and referral services for alleged offenders who are also active duty Service members. Such care will be administered in a way to respect and preserve the rights of the victim and the accused, and the physical safety of both.

* * * * *

(16) Require that psychotherapy and counseling records and clinical notes pertaining to sexual assault victims contain only information that is required for diagnosis and treatment. Any record of an account of a sexual assault incident created as part of a psychotherapy exercise will remain the property of the patient making the disclosure and should not be retained within the psychotherapist's record.

(b) *Selection, training, and certification.* For the selection, training, and certification of healthcare providers performing SAFEs in MTFs, refer to standards in § 105.14.

* * * * *

(e) * * *

(2) Assessment of the risk of pregnancy, options for emergency contraception, and any follow-up care and referral services to the extent authorized by law.

* * * * *

(f) * * *

(2) The Combatant Commanders shall:

(i) Require that victims of sexual assault are given priority treatment as emergency cases in deployed locations within their area of responsibility and are transported to an appropriate evaluation site, evaluated, treated for injuries (if any), and offered SAPR VA assistance and a SAFE as quickly as possible.

(ii) Require that U.S. theater hospital facilities (Level #, NATO role #) (See § 105.3) have appropriate capability to provide experienced and trained SARC and SAPR VA services and SAFE providers, and that victims of sexual assault, regardless of reporting status, are medically evacuated to such facilities as soon as possible (within operational needs) of making a report, consistent with operational needs.

(3) In accordance with DoDD 5136.13, the Director, Defense Health Agency (DHA), will:

(i) Ensure that this policy is implemented in the National Capital Region.

(ii) Identify a primary office to represent the National Capital Region in Military Service coordination of issues pertaining to medical management of victims of sexual assault.

(iii) Assign a healthcare provider at each MTF in the National Capital Region as the primary point of contact concerning DoD and Military Service SAPR policy and for updates in sexual assault care.

■ 12. Amend § 105.12 by:

■ a. Revising paragraphs (a) and (c).

■ b. In paragraph (d), removing "tell" and adding in its place "inform."

■ c. Revising paragraphs (e) introductory text, (f) introductory text, and (f)(2) introductory text.

■ d. In paragraph (f)(2)(i) introductory text, removing "their" and adding in its place "his or her."

■ e. In paragraph (f)(2)(i)(A):

■ i. Removing "SAFE Kit, DD Form 2911, and the DD Form 2910" and adding in its place "SAFE Kit."

■ ii. Removing "(However, at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the Department of Defense Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years.)" and adding in its place "The DD Forms 2910 and 2911 will be retained for 50 years in a manner that protects confidentiality."

■ iii. Removing "5-year retention" and adding in its place "5-year SAFE Kit retention."

■ f. In paragraph (f)(2)(ii) introductory text, removing "5-year storage period" and adding in its place "5-year SAFE Kit storage period."

■ g. Revising paragraphs (f)(2)(ii)(B)(*1*) and (*2*) and (f)(2)(iii).

The revisions read as follows:

§ 105.12 SAFE Kit collection and preservation.

* * * * *

(a) Medical services offered to eligible victims of sexual assault include the ability to elect a SAFE in addition to the general medical management related to sexual assault response, to include medical services and mental healthcare. The SAFE of a sexual assault victim should be conducted by a healthcare provider who has been trained and certified in the collection of forensic evidence and treatment of these victims as specified in § 105.14(g)(4). The forensic component includes gathering information in DD Form 2911 from the victim for the medical forensic history, an examination, documentation of biological and physical findings, collection of evidence from the victim, and follow-up as needed to document additional evidence.

* * * * *

(c) In situations where installations do not have a SAFE capability, the installation commander will require that the eligible victim, who wishes to have a SAFE, be transported to a MTF or local off-base, non-military facility that has a SAFE capability. Local sexual assault medical forensic examiners or other healthcare providers who are trained and certified as specified in in § 105.14(g)(4) to perform a SAFE may also be contracted to report to the MTF to conduct the examination.

* * * * *

(e) Upon completion of the SAFE in an Unrestricted Reporting case, the healthcare provider shall package, seal, and label the evidence container(s) with the victim's name and notify the MCIO. The SAFE Kit will be retained for 5 years in accordance with section 586 of Public Law 112–81. When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit. Personal property retained as evidence collected in association with a sexual assault investigation may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 538 of Public Law 113–291.

* * * * *

(f) Upon completion of the SAFE in a Restricted Reporting case, the healthcare provider shall package, seal, and label the evidence container(s) with the RRCN and store it in accordance with Service regulations. The SAFE Kit will be retained for 5 years in a location designated by the Military Service concerned. When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit. The 5-year time frame will start from the date the victim signs the DD Form 2910, but if there is no DD Form 2910, the timeframe will start from the date the SAFE Kit is completed.

* * * * *

(2) Any evidence and the SAFE Kit in Restricted Reporting cases shall be stored for 5 years from the date of the victim's Restricted Report of the sexual assault, thus allowing victims additional time to accommodate, for example, multiple deployments exceeding 12 months.

* * * * *

(B) * * *

(*1*) The DoD law enforcement agency, which will receive forensic evidence from the healthcare provider if not already in custody, and label and store such evidence shall be designated.

(*2*) The designated DoD law enforcement agency must be trained and capable of collecting and preserving evidence in Restricted Reports prior to assuming custody of the evidence using established chain of custody procedures.

(iii) Evidence will be stored by the DoD law enforcement agency until the 5-year storage period for Restricted Reporting is reached or a victim changes to Unrestricted Reporting.

■ 13. Amend § 105.13 by:

■ a. Redesignating paragraph (a)(1) through (6) as paragraphs (a)(2) through (7), and adding a new paragraph (a)(1).

■ b. In newly redesignated paragraph (a)(2), removing "may" and adding in its place "will."

■ c. In newly redesignated paragraph (a)(3), removing "This responsibility may" and adding in its place "This responsibility shall."

■ d. Revising newly redesignated paragraph (a)(4).

■ e. Redesignating paragraphs (b)(2)(ii) through (vii) as paragraphs (b)(2)(iii) through (viii), and adding a new paragraph (b)(2)(ii).

■ f. Revising newly redesignated paragraph (b)(2)(iii).

■ g. In paragraph (b)(3)(i), removing "or a DSAID Service interface system" and adding ", such as areas of combat" after "In deployed locations."

■ h. In paragraph (b)(3)(ii), removing "or a DSAID Service interface system" at the end of sentence.

■ i. In paragraph (b)(6), adding the sentence "The victim's commander cannot delegate this responsibility." at the end of the paragraph.

■ j. Redesignating paragraph (b)(8) as paragraph (b)(10) and paragraph (b)(7) as paragraph (b)(8), and adding new paragraphs (b)(7) and (9).

■ k. Revising newly redesignated paragraph (b)(10) introductory text.

■ l. Removing newly redesignated paragraph (b)(10)(ii).

■ m. Further redesignating newly redesignated paragraphs (b)(10)(iii) and (iv) as paragraphs (b)(10)(ii)(A) and (B) and paragraph (b)(10)(v) as paragraph (b)(10)(iii).

■ n. Revising newly redesignated paragraph (b)(10)(iii).

The revisions and additions read as follows:

§ 105.13 Case management for unrestricted reports of sexual assault.

(a) * * *

(1) Case Management Group oversight for Unrestricted Reports of adult sexual assaults is triggered by open cases in DSAID initiated by a DD Form 2910 or an investigation initiated by an MCIO. In a case where there is an investigation initiated by an MCIO, but no corresponding Unrestricted DD Form 2910:

(i) The SARC would have no information for the CMG members. During the CMG, the MCIO would provide case management information to the CMG including the SARC.

(ii) The SARC would open a case in DSAID indicating the case status as "Open with Limited Information." The SARC will only use information from the MCIO to initiate an "Open with Limited Information" case in DSAID. In the event that there was a Restricted Report filed prior to the independent investigation, the SARC will not use any information provided by the victim, since that information is confidential.

* * * * *

(4) Required CMG members shall include: victim's immediate commander; all SARCs assigned to the installation (mandatory attendance regardless of whether they have an assigned victim being discussed); victims' SAPR VA, MCIO and DoD law enforcement representatives who have detailed knowledge of the case; victims' healthcare provider or mental health and counseling services provider; chaplain, legal representative, or SJA; installation personnel trained to do a safety assessment of current sexual assault victims; victim's VWAP representative (or civilian victim witness liaison, if available), or SVC/VLC. MCIO, DoD law enforcement and the legal representative or SJA shall provide case dispositions. The CMG chair will ensure that the appropriate principal is available. The responsibility for CMG members to attend CMG meetings will not be delegated. Additional persons may be invited to CMG meetings at the discretion of the chair if those persons have an official need to know, with the understanding that maintaining victim privacy is essential.

* * * * *

(b) * * *

(2) * * *

(ii) Require effective and timely coordination and collaboration among CMG members. At each CMG meeting:

(A) Confirm that the MCIO assigned to an adult sexual assault investigation has notified the SARC as soon as possible, after the investigation is initiated in accordance with DoDI 1332.14.

(B) Confirm that all Unrestricted Reports, initiated by a DD Form 2910 or an investigation initiated by an MCIO, are entered into DSAID within 48 hours of the DD Form 2910 being signed by the victim.

(C) Confirm that commanders are providing the final disposition of sexual assault cases to MCIOs. Confirm that the installation commander's or his/her designated legal officer is providing the SARC the required information for the SARC to enter the final case disposition in DSAID.

(D) Confirm that members of the SVIP are collaborating with local SARCs and SAPR VAs during all stages of the investigative and military justice process to ensure an integrated capability, to the greatest extent possible, in accordance with DTM 14–003 and DoDI 5505.19.

(E) Confirm that the SARCs and SAPR VAs have what they need to provide an effective SAPR response to victims.

(iii) Require that case dispositions to include cases disposed of by nonjudicial proceedings are communicated to the sexual assault victim, to the extent authorized by law, within 2 business days of the final disposition decision. The CMG chair will require that the appropriate paperwork (pursuant to Service regulation) is submitted for each case disposition within 24 hours, which shall be inputted into DSAID by the designated officials.

* * * * *

(7) If a victim transfers from the installation, then the processes in Table 2 in § 105.9 will apply as appropriate.

* * * * *

(9) At every CMG meeting, the CMG Chair will ask the CMG members if the victim, victim's family members, witnesses, bystanders (who intervened), SARCs and SAPR VAs, responders, or other parties to the incident have experienced any incidents of retaliation, reprisal, ostracism, or maltreatment. If any allegations are reported, the CMG Chair will forward the information to the proper authority or authorities (*e.g.,* MCIO, Inspector General, Military Equal Opportunity). Discretion may be exercised in disclosing allegations of retaliation, reprisal, ostracism, or maltreatment when such allegations involve parties to the CMG. Retaliation, reprisal, ostracism, or maltreatment allegations involving the victim, SARCs, and SAPR VAs will remain on the CMG agenda for status updates, until the victim's case is closed or until the allegation has been appropriately addressed.

(10) The CMG chair will confirm that each victim receives a safety assessment as soon as possible. There will be a safety assessment capability. The CMG chair will identify installation personnel who have been trained and are able to perform a safety assessment of each sexual assault victim.

* * * * *

(iii) The CMG chair will immediately stand up a multi-disciplinary High-Risk Response Team if a victim is assessed to be in a high-risk situation. The purpose and the responsibility of the High-Risk Response Team is to continually monitor the victim's safety, by assessing danger and developing a plan to manage the situation.

(A) The High-Risk Response Team (HRRT) shall be chaired by the victim's immediate commander and, at a minimum, include the alleged offender's immediate commander; the victim's SARC and SAPR VA; the MCIO, the judge advocate, and the VWAP assigned to the case, victim's healthcare provider or mental health and counseling services provider; and the personnel who conducted the safety assessment. The responsibility of the HRRT members to attend the HRRT meetings and actively participate in them will not be delegated.

(B) The High-Risk Response Team shall make their first report to the installation commander, CMG chair, and CMG co-chair within 24 hours of being activated. A briefing schedule for the CMG chair and co-chair will be determined, but briefings shall occur at least once a week while the victim is on high-risk status.

(C) The High-Risk Response Team assessment of the victim shall include, but is not limited to evaluating:

(*1*) Victim's safety concerns.

(*2*) Alleged offender's access to the victim or whether the alleged offender is stalking or has stalked the victim.

(*3*) Previous or existing relationship or friendship between the victim and the alleged offender, or the alleged offender and the victim's spouse, or victim's dependents. The existence of children in common. The sharing (or prior sharing) of a common domicile.

(*4*) Whether the alleged offender (or the suspect's friends or family members) has destroyed victim's property; threatened or attacked the victim; or threatened, attempted, or has a plan to harm or kill the victim or the victim's family members; or intimidated the victim to withdraw participation in the investigation or prosecution.

(*5*) Whether the alleged offender has threatened, attempted, or has a plan to commit suicide.

(*6*) Whether the alleged offender has used a weapon, threatened to use a weapon, or has access to a weapon that may be used against the victim.

(*7*) Whether the victim has sustained serious injury during the sexual assault incident.

(*8*) Whether the alleged offender has a history of law enforcement involvement regarding domestic abuse, assault, or other criminal behavior.

(*9*) Whether the victim has a civilian protective order or command has an MPO against the alleged offender, or there has been a violation of a civilian protective order or MPO by the alleged offender.

(*10*) History of drug or alcohol abuse by either the victim or the alleged offender.

(*11*) Whether the alleged offender exhibits erratic or obsessive behavior, rage, agitation, or instability.

(*12*) Whether the alleged offender is a flight risk.

■ 14. Revise § 105.14 to read as follows:

§ 105.14 Training requirements for DoD personnel.

(a) *Management of training requirements.* (1) Commanders, supervisors, and managers at all levels shall be responsible for the effective implementation of the SAPR program.

(2) Military and DoD civilian officials at each management level shall advocate a robust SAPR program and provide education and training that shall enable them to prevent and appropriately respond to incidents of sexual assault.

(3) Data shall be collected according to the annual reporting requirements in accordance with Public Law 111–383 and explained in § 105.16.

(b) *General training requirements.* (1) The Secretaries of the Military Departments and the Chief, NGB, shall direct the execution of the training requirements in this section to individually address SAPR prevention and response in accordance with § 105.5. These SAPR training requirements shall apply to all Service members and DoD civilian personnel who supervise Service members and should be provided by subject matter experts in those practice areas. These training requirements must align with current SAPR core competencies and learning objectives.

(i) The Secretaries and the Chief, NGB, shall develop dedicated SAPR training to ensure comprehensive knowledge of the training requirements.

(ii) The SAPR training, at a minimum, shall incorporate adult learning theory, which includes interaction and group participation.

(iii) Upon request, the Secretaries and the Chief, NGB, shall submit a copy of SAPR training programs or SAPR training elements to USD(P&R) through SAPRO for evaluation of consistency and compliance with DoD SAPR training standards in this part. The Military Departments will correct USD(P&R) identified DoD SAPR policy and training standards discrepancies.

(2) Commanders and managers responsible for training shall require that all personnel (*i.e.,* all Service members, DoD civilian personnel who supervise Service members, and other personnel as directed by the USD(P&R)) are trained and that completion of training data is annotated. Commanders for accession training will ensure all new accessions are trained and that completion of training data is annotated.

(3) If responsible for facilitating the training of civilians supervising Service members, the unit commander or civilian director shall require all SAPR training requirements in this section are met. The unit commander or civilian equivalent shall be accountable for requiring data collection regarding the training.

(4) The required subject matter for the training shall be appropriate to the Service member's grade and

commensurate with their level of responsibility, and will include:

(i) Defining what constitutes sexual assault. Utilizing the term "sexual assault" as defined in 32 CFR part 103.

(ii) Explaining why sexual assaults are crimes.

(iii) Defining the meaning of "consent" as defined in 32 CFR part 103.

(iv) Explaining offender accountability and UCMJ violations.

(v) Explaining updates to military justice that impact victims, to include:

(A) The codification and enhancement of victims' rights in the military.

(B) Changes in Articles 32 and 60 of the UCMJ (sections 832 and 860 of title 10 U.S.C.) and their impact on victims.

(C) Elimination of the 5-year statute of limitations on sexual assault.

(D) Minimum mandatory sentence of dismissal or dishonorable discharge for persons found guilty in a general court-martial of: rape under Article 120(a); sexual assault under Article 120(b); forcible sodomy under Article 125; or an attempt to commit these offenses under Article 80 of the UCMJ (sections 920(a), 920(b), 925 or 880 of title 10 U.S.C.).

(E) That defense counsel has to make the request to interview the victim through the SVC/VLC or other counsel for the victim, if the victim is represented by counsel. In addition, the victim has the right to be accompanied to the interview by the SARC, SAPR VA, SVC/VLC, or counsel for the government.

(F) That the victim has the right to submit matters for consideration by the convening authority during the clemency phase of the court-martial process, and the convening authority will not consider the victim's character as a factor in making his or her determination unless such matters were presented at trial and not excluded at trial.

(G) Service regulations requiring inclusion of sex-related offenses in personnel records and mandating commanders to review personnel records of incoming Service members for these notations.

(H) Establishing a process to ensure consultation with a victim of an alleged sex-related offense that occurs in the United States to solicit the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

(vi) Explaining the distinction between sexual harassment and sexual assault and that both are unacceptable forms of behavior even though they may have different penalties. Emphasizing the distinction between civil and criminal actions.

(vii) Explaining available reporting options (Restricted and Unrestricted), the advantages and limitations of each option, the effect of independent investigations on Restricted Reports (See § 105.8(a)(6)) and explaining MRE 514.

(viii) Providing an awareness of the SAPR program (DoD and Service) and command personnel roles and responsibilities, including all available resources for victims on and off base. Explaining that Military OneSource (see § 105.3) has a mandatory reporting requirement.

(ix) Identifying prevention strategies and behaviors that may reduce sexual assault, including bystander intervention, risk reduction, and obtaining affirmative consent. Identifying strategies to safely intervene and to guard against retaliation, reprisal, ostracism, or maltreatment because of that intervention.

(x) Discussing process change to ensure that all sexual assault response services are gender-responsive, culturally-competent, and recovery-oriented.

(xi) Discussing expedited transfers and MPO procedures.

(xii) Providing information to victims when the alleged perpetrator is the commander or in the victim's chain of command, to go outside the chain of command to report the offense to other COs or an Inspector General. Victims shall be informed that they can also seek assistance from SVC/VLC, a legal assistance attorney or the DoD Safe Helpline.

(xiii) Discussing 50-year document retention for sexual assault documents (DD Forms 2910 and 2911), to include retention of investigative records. Explaining why it is recommended that sexual assault victims retain sexual assault records for potential use in the Department of Veterans Affairs benefits applications. Explain that the SAFE Kit is retained for 5 years in a Restricted Report cases to allow victims the opportunity to change their minds and convert to Unrestricted. Explain that the SAFE Kit is retained for 5 years in Unrestricted Report cases.

(xiv) Explaining the eligibility for SVC/VLC for individuals who make Restricted or Unrestricted Reports of sexual assault, and the types of legal assistance authorized to be provided to the sexual assault victim.

(xv) Explaining that the nature of the relationship between an SVC/VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client.

(xvi) Explaining what constitutes retaliation, reprisal, coercion, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections and procedures for reporting allegations of reprisal.

(A) Explaining what is the appropriate, professional response by peers to a victim and an alleged offender when a sexual assault is reported in a unit. Using scenarios to facilitate discussion of appropriate behavior, to include discussing potential resentment of peers for victims, bystanders, or witnesses who report a sexual assault. Explaining that incidents of retaliation, reprisal, ostracism, and maltreatment violate good order and discipline erode unit cohesion and deter reporting of sexual assault incidents.

(B) Explaining that all personnel in the victim's chain of command, officer and enlisted, when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, are required to take appropriate measures to protect the victim, including information regarding how to prevent retaliation, reprisal, ostracism, and maltreatment in a unit after a report of sexual assault.

(xvii) Explaining Service regulations that protect Service member victims of sexual assault and/or their dependents from retaliation, reprisal, ostracism, and maltreatment. If the allegation is an act that is criminal in nature and the victim filed an Unrestricted Report, the allegation should immediately be reported to an MCIO. Explaining that victims can seek assistance on how to report allegations by requesting assistance from:

(A) A SARC, SAPR VA, or SVC/VLC.

(B) A SARC in different installation, which can be facilitated by Safe Helpline.

(C) Their immediate commander.

(D) A commander outside their chain of command.

(E) Service personnel to invoke their Service-specific reporting procedures regarding such allegations (AD 2014–20/AFI 36–2909/SECNAVINST 5370.7D).

(F) Service Military Equal Opportunity representative to file a complaint of sexual harassment.

(G) A G/FO if the retaliation, reprisal, ostracism, or maltreatment involves the administrative separation of a victim within 1 year of the final disposition of the sexual assault case. A victim may request that the G/FO review the separation.

(H) A G/FO if the victim believes there has been an impact on their military career because victims reported a sexual assault or sought mental health treatment for sexual assault. The victim may discuss the impact with the G/FO.

(I) An SVC/VLC, trial counsel and VWAP, or legal assistance attorney to facilitate a report with a SARC or SAPR VA.

(J) Service personnel to file a complaint of wrongs in accordance with Article 138 of the UCMJ (section 938 of title 10 U.S.C.).

(K) DoD IG, invoking Whistle-blower Protections.

(L) Commander or SARC to request an Expedited Transfer.

(M) Commander or SARC to request a safety transfer or MPO, if the victim fears violence.

(xviii) Explaining Service regulations that protect SARC and SAPR VA from retaliation, reprisal, ostracism, and maltreatment, related to the execution of their duties and responsibilities.

(xix) Explaining Service regulations that protect witnesses and bystanders who intervene to prevent sexual assaults or who report sexual assaults from retaliation, reprisal, ostracism, and maltreatment.

(xx) Explaining that, when completing an SF 86 in connection with an application, investigation, or reinvestigation for a security clearance, it is DoD policy to answer "no" to question 21 of SF 86 with respect to consultation with a health care professional if:

(A) The individual is a victim of a sexual assault; or

(B) The consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.

(c) *DoD personnel training requirements.* Refer to Military Service-specific training officers that maintain personnel training schedules.

(1) Initial SAPR training will occur within 14 days of initial entrance.

(i) The matters specified in paragraph (c)(1)(ii) of this section will be carefully explained to each member of the Military Services at the time of or within 14 duty days of the member's initial entrance to active duty or the member's initial entrance into a duty status with a Reserve Component.

(ii) The matters to be explained in the initial SAPR training include:

(A) DoD policy with respect to sexual assault.

(B) Special emphasis to interactive scenarios that fully explain the reporting options and the channels through which victims can make an Unrestricted or a Restricted Report of a sexual assault.

(C) The resources available with respect to sexual assault reporting and prevention and the procedures a member seeking to access those resources should follow. Emphasize that sexual assault victims have the right and ability to consult with a SVC or VLC before deciding whether to make a Restricted or Unrestricted Report, or no report at all.

(2) Accessions training shall occur upon initial entry.

(i) Mirror the general training requirements in paragraph (b) of this section.

(ii) Provide scenario-based, real-life situations to demonstrate the entire cycle of prevention, reporting, response, and accountability procedures to new accessions to clarify the nature of sexual assault in the military environment.

(3) Annual training shall occur once a year and is mandatory for all Service members regardless of rank or occupation or specialty.

(i) Mirror the general training requirements in paragraph (b) of this section.

(ii) Explain the nature of sexual assault in the military environment using scenario-based, real-life situations to demonstrate the entire cycle of prevention, reporting, response, and accountability procedures.

(iii) Deliver to Service members in a joint environment from their respective Military Services and incorporate adult learning theory.

(4) Professional military education (PME) and leadership development training (LDT).

(i) For all trainees, PME and LDT shall mirror the general training requirements in this section.

(ii) For senior noncommissioned officers and commissioned officers, PME and LDT shall occur during developmental courses throughout the military career and include:

(A) Explanation and analysis of the SAPR program.

(B) Explanation and analysis of the necessity of immediate responses after a sexual assault has occurred to counteract and mitigate the long-term effects of violence. Long-term responses after sexual assault has occurred will address the lasting consequences of violence.

(C) Explanation of rape myths (See SAPR Toolkit on *www.sapr.mil*), facts, and trends pertaining to the military population.

(D) Explanation of the commander's and senior enlisted Service member's role in the SAPR program.

(E) Review of all items found in the "Commander's 30-Day Checklist for Unrestricted Reports of Sexual Assault". (See SAPR Toolkit on *www.sapr.mil.*)

(F) Explanation of what constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections. This includes understanding:

(*1*) Of resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, sexual harassment, or to request a transfer or MPO.

(*2*) That victims who reported a sexual assault or sought mental health treatment for sexual assault may discuss issues related to their military career with a G/FO that the victim believes are associated with the sexual assault.

(*3*) That all personnel in the victim's chain of command, officer and enlisted, when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, are required to take appropriate measures to protect the victim.

(*4*) Of a supervisor's role in unit SAPR programs and how to address sexual assault and other illegal and other negative behaviors that can affect command climate.

(5) Pre-deployment training shall be provided.

(i) Mirror the general training requirements in paragraph (b) of this section.

(ii) Explain risk reduction factors tailored to the deployment location.

(iii) Provide a brief history of the specific foreign countries or areas anticipated for deployment, and the area's customs, mores, religious practices, and status of forces agreement. Explain cultural customs, mores, and religious practices of coalition partners.

(iv) Identify the type of trained sexual assault responders who are available during the deployment (*e.g.,* law enforcement personnel, legal personnel, SARC, SAPR VAs, healthcare personnel, chaplains).

(v) Include completion of D–SAACP certification for SARCs and SAPR VAs.

(6) Post-deployment reintegration training shall occur within 30 days of returning from deployment and:

(i) Commanders of re-deploying personnel will ensure training completion.

(ii) Explain available counseling and medical services, reporting options, and eligibility benefits for Service members (active duty and Reserve Component).

(iii) Explain MRE 514. Explain that National Guard and Reserve members can make a Restricted or Unrestricted report with the SARC or SAPR VA and then be eligible to receive SAPR services.

(7) Pre-command training shall occur prior to filling a command position.

(i) Mirror the general training requirements in paragraph (b) of this section.

(A) The personnel trained shall include all officers who are selected for command and the unit's senior enlisted Service member.

(B) The required subject matter for the training shall be appropriate to the level of responsibility and commensurate with level of command.

(ii) Explain rape myths, facts, and trends.

(iii) Provide awareness of the SAPR program and explain the commander's and senior enlisted Service member's role in executing their SAPR service program.

(iv) Review all items found in the commander's protocols for Unrestricted Reports of sexual assault. (See SAPR Toolkit on *www.sapr.mil.*)

(v) Explain what constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections and procedures for addressing reprisal allegations. This includes understanding:

(A) Resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, sexual harassment or to request a transfer or MPO.

(B) That victims who reported a sexual assault or sought mental health treatment for sexual assault may discuss issues related to their military career with the G/FO that the victim believes are associated with the sexual assault.

(C) That all personnel in the victim's chain of command, officer and enlisted, when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, are required to take appropriate measures to protect the victim.

(D) The role of the chain of command in unit SAPR programs.

(E) The skills needed to address sexual harassment and sexual assault. Interactive exercises should be conducted to provide supervisors the opportunity to practice these skills.

(vi) A sexual assault prevention and response training module will be included in the training for new or prospective commanders at all levels of command. The training will be tailored to the responsibilities and leadership requirements of members of the Military Services as they are assigned to command positions. Such training will include:

(A) Fostering a command climate that does not tolerate sexual assault.

(B) Fostering a command climate in which persons assigned to the command are encouraged to intervene to prevent potential incidents of sexual assault.

(C) Fostering a command climate that encourages victims of sexual assault to report any incident of sexual assault.

(D) Understanding the needs of and the resources available to, the victim after an incident of sexual assault.

(E) Using MCIOs for the investigation of alleged incidents of sexual assault.

(F) Understanding available disciplinary options, including court-martial, nonjudicial punishment, administrative action, and deferral of discipline for collateral misconduct, as appropriate.

(G) Understanding the Expedited Transfer policy. Commanders have the authority to make a timely determination, and to take action, regarding whether a Service member who is alleged to have committed or attempted to commit a sexual assault offense should be temporarily reassigned or removed from a position of authority or from an assignment. This determination should be made, not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the Service member's unit in accordance with Public Law 113–66.

(8) Curricula of the Military Service Academies will include:

(i) Substantive course work that addresses honor, respect, character development, leadership, and accountability as such pertain to the issue of preventing and the appropriate response to sexual assault in the Military Services.

(ii) Initial SAPR training will occur within 14 days of the initial arrival of a new cadet or midshipman at that Military Service Academy and repeated annually thereafter. Training will be conducted using adult learning method in accordance with paragraph (c)(1) of this section.

(iii) At a minimum, a brief history of the problem of sexual assault in the Military Services, a definition of sexual assault, information relating to reporting a sexual assault, victims' rights, and dismissal and dishonorable discharge for offenders of Service members convicted by general court-martial for certain sex-related offenses in accordance with section 856 of title 10 U.S.C.

(d) *G/FO and SES personnel training requirements.* G/FO and SES personnel training shall occur at the initial executive level program training and annually thereafter. Mirror the general training requirements in paragraph (b) of this section.

(1) The Military Services' executive level management offices are responsible for tracking data collection regarding the training.

(2) The required subject matter for the training shall be appropriate to the level of responsibility and commensurate with level of command.

(3) Training guidance for other DoD components other than the Military Departments, will be provided in a separate issuance.

(e) *Military recruiters.* Military recruiter training shall occur annually and mirror the general training requirements in paragraph (b) of this section.

(f) *Training for civilians who supervise Service members.* Training is required for civilians who supervise Service members, for all civilians in accordance with section 585 of Public Law 112–81 and, if feasible, highly recommended for DoD contractors. Training shall occur annually and mirror the general training requirements in paragraph (b) of this section.

(g) *Responder training requirements.* To standardize services throughout the DoD, as required in 32 CFR part 103, all DoD sexual assault responders shall receive the same baseline training. These minimum training standards form the baseline on which the Military Services and specialized communities can build. First responders are composed of personnel in the following disciplines or positions: SARCs; SAPR VAs; healthcare personnel; DoD law enforcement; MCIOs; judge advocates; chaplains; firefighters and emergency medical technicians. Commanders and VWAP personnel can be first responders. Commanders receive their SAPR training separately.

(1) All responder training shall:

(i) Be given in the form of initial and annual refresher training from their Military Service in accordance with § 105.5. Responder training is in addition to annual training.

(ii) Be developed for each responder functional area from each military service and shall:

(A) Explain the different sexual assault response policies and critical issues.

(*1*) DoD SAPR policy, including the role of the SARC, SAPR VA, victim witness liaison, and CMG.

(*2*) Military Service-specific policies.

(*3*) Unrestricted and Restricted Reporting as well as MRE 514.

(*4*) Exceptions to Restricted Reporting and limitations to use.

(*5*) Change in victim reporting preference election.

(*6*) Victim advocacy resources.

(B) Explain the requirement that SARCs must respond in accordance with this part.

(C) Describe local policies and procedures with regards to local resources, referrals, procedures for military and civilians as well as collaboration and knowledge of resources and referrals that can be utilized at that specific geographic location.

(D) Explain the range of victim responses to sexual assault to include:

(*1*) Victimization process, including re-victimization and secondary victimization.

(*2*) Counterintuitive behavior.

(*3*) Impact of trauma on memory and recall.

(*4*) Potential psychological consequences, including acute stress disorder and post traumatic stress disorder.

(E) Explain deployment issues, including remote location assistance.

(F) Explain the possible outcomes of investigations of sexual assault.

(G) Explain the possible flow of a sexual assault investigation. (See flowchart in the SAPR Policy Toolkit, located at *www.sapr.mil.*)

(H) Be completed prior to deployment.

(I) Recommend, but not require, that SAPR training for responders include safety and self care.

(J) Explain how to provide a response that recognizes the high prevalence of pre-existing trauma.

(K) Explain the eligibility for SVC or VLC for both Restricted and Unrestricted Reports of sexual assault, and the types of legal assistance authorized to be provided to the sexual assault victim. Explain that the nature of the relationship between an SVC/VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client.

(2) SARC training shall:

(i) Provide the responder training requirements in paragraph (g)(1) of this section.

(ii) Be scenario-based and interactive. Provide for role play where a trainee SARC counsels a sexual assault victim and is critiqued by a credentialed SARC and/or an instructor.

(iii) Explain roles and responsibilities and command relationships.

(iv) Explain the different reporting options, to include the effects of independent investigations (see § 105.8). Explain the exceptions to Restricted Reporting, with special emphasis on the requirement to disclose personally identifiable information of the victim or alleged perpetrator if such disclosure is necessary to prevent or mitigate a serious and imminent threat to the health and safety of the victim or another individual.

(v) Provide training on how MCIOs will be entering reports of sexual assault into DSAID through MCIO cases management systems or by direct data entry. Provide training on potential discovery obligations regarding any notes entered in DSAID.

(vi) Provide training on document retention and SAFE Kit retention in of Restricted and Unrestricted cases. Explain evidence collected in a sexual assault investigation is disposed of in accordance with section 586 of Public Law 112–81, as amended by section 538 of Public Law 113–291, and DoD regulations.

(vii) Provide training on expedited transfer and MPO procedures.

(viii) Provide instruction on all details of SAPR VA screening, including:

(A) What to do if SAPR VA is a recent victim, or knows sexual assault victims.

(B) What to do if SAPR VA was accused of being an alleged offender or knows someone who was accused.

(C) Identifying the SAPR VA's personal biases.

(D) The necessary case management skills.

(*1*) Required reports and proper documentation as well as records management.

(*2*) Instruction to complete DD Form 2910 and proper storage according to Federal and Service privacy regulations.

(*3*) Ability to conduct SAPR training, when requested by the SARC or commander.

(*4*) Transferring cases to another installation SARC.

(ix) Explain the roles and responsibilities of the VWAP and DD Form 2701.

(x) Inform SARCs of the existence of the SAPRO Web site at *http://www.sapr.mil,* and encourage its use for reference materials and general DoD-level SAPR information.

(xi) Include annual suicide prevention training to facilitate their ability to assist a sexual assault victim who has suicidal ideation.

(3) SAPR VA training shall:

(i) Provide the responder training requirements in paragraph (g)(1) of this section.

(ii) Be scenario-based and interactive. Provide for role play where a trainee SAPR VA counsels a sexual assault victim, and then that counseling session is critiqued by an instructor.

(iii) Explain the different reporting options, to include the effects of independent investigations (see § 105.8). Explain the exceptions to Restricted Reporting, with special emphasis on the requirement to disclose personally identifiable information of the victim or alleged perpetrator if such disclosure is necessary to prevent or mitigate a serious and imminent threat to the health and safety of the victim or another individual.

(iv) Include:

(A) Necessary critical advocacy skills.

(B) Basic interpersonal and assessment skills.

(*1*) Appropriate relationship and rapport building.

(*2*) Sensitivity training to prevent re-victimization.

(C) Crisis intervention.

(D) Restricted and Unrestricted Reporting options as well as MRE 514.

(E) Roles and limitations, to include: command relationship, SAPR VA's rights and responsibilities, reporting to the SARC, and recognizing personal biases and issues.

(F) Preparing proper documentation for a report of sexual assault.

(G) Document retention and SAFE Kit retention in Restricted and Unrestricted cases. Explain evidence collected with a sexual assault investigation is disposed of in accordance with section 586 of Public Law 112–81, amended by section 538 of Public Law 113–291, and DoD regulations.

(H) Expedited transfer and MPO procedures.

(I) Record keeping rules for protected disclosures relating to a sexual assault.

(J) A discussion of ethical issues when working with sexual assault victims as a VA.

(K) A discussion of individual versus system advocacy.

(L) A review of the military justice process and adverse administrative actions.

(M) Overview of criminal investigative process and military judicial requirements.

(N) A review of the issues in victimology.

(*1*) Types of assault.

(*2*) Health consequences such as mental and physical health.

(*3*) Cultural and religious differences.

(*4*) Victims' rights and the victim's role in holding offenders appropriately accountable and limitations on offender accountability when the victim elects Restricted Reporting.

(*5*) Healthcare management of sexual assault and medical resources and treatment options to include the medical examination, the forensic examination, mental health and counseling, pregnancy, and STD/I and HIV.

(*6*) Identification of safety issues and their immediate report to the SARC or law enforcement, as appropriate.

(*7*) Identification of retaliation, reprisal, ostracism, and maltreatment actions against the victim; procedures for responding to these allegations and their immediate reporting to the SARC and the VWAP; safety planning to include how to prevent retaliation, reprisal, ostracism, and maltreatment actions against the victim.

(*8*) Separation of the victim and offender as well as the MPO and CPO process.

(*9*) Expedited transfer process for the victim.

(O) An explanation of the roles and responsibilities of the VWAP and DD Form 2701.

(P) Safety and self-care, to include vicarious trauma.

(v) Include annual suicide prevention training to facilitate their ability to assist a sexual assault victim who has suicidal ideation.

(4) Healthcare personnel training shall be in two distinct training categories:

(i) Training for healthcare personnel assigned to an MTF. In addition to the responder training requirements in paragraph (e)(1) of this section, healthcare personnel who received a Restricted Report shall immediately call a SARC or SAPR VA, so a DD Form 2910 can be completed. Training must include the information that healthcare personnel who receive a Restricted Report will maintain confidentiality to the extent authorized by law and this part. Training must include Expedited Transfers.

(ii) Training for sexual assault medical forensic examiners. Healthcare personnel who received a Restricted Report shall immediately call a SARC or SAPR VA, so a DD Form 2910 can be completed.

(A) In addition to the responder training requirements and healthcare personnel requirements in paragraphs (g)(1) and (g)(4)(i) of this section, healthcare providers performing SAFEs will be trained and must remain proficient in conducting SAFEs.

(B) All providers conducting SAFEs must have documented education, training, and clinical practice in sexual assault examinations in accordance with DoDI 1030.2 and the U.S. Department of Justice, Office on Violence Against Women, National Training Standards *for Sexual Assault Medical Forensic Examiners* and in accordance with DoDI 6025.13.

(C) There must be selection, training, and certification standards for healthcare providers performing SAFEs in MTFs.

(*1*) *Selection.* (*i*) Have specified screening and selection criteria consistent with DTM 14–001, the U.S. Department of Justice, Office on Violence Against Women, National Training Standards *for Sexual Assault Medical Forensic Examiners,* and DoDI 6025.13.

(*ii*) In addition to the requirements in DoDI 6025.13, licensed DoD providers eligible to take SAFE training must pass a National Agency Check that will determine if they have been convicted of sexual assault, child abuse, domestic violence, violent crime (as defined by the Federal Bureau of Investigation's Uniform Crime Reporting Program) and other felonies.

(*iii*) If the candidate is a non-licensed provider, he or she must meet the same screening standards as those for SARCs in the D–SAACP certification program.

(*2*) *Training for healthcare providers performing SAFEs in MTFs.* Healthcare providers who may be called on to provide comprehensive medical treatment to a sexual assault victim, including performing SAFEs, are: obstetricians, gynecologists, and other licensed practitioners (preferably family physicians, emergency medicine physicians, and pediatricians); advanced practice nurses with specialties in midwifery, women's health, family health, and pediatrics; physician assistants trained in family practice or women's health; and registered nurses. These individuals must:

(*i*) In addition to the responder training requirements and the healthcare personnel training requirements in paragraphs (g)(1) and (g)(4)(i) of this section, healthcare providers performing SAFEs shall be trained and remain proficient in conducting SAFEs.

(*ii*) All providers conducting SAFEs must have documented education, training, and clinical practice in sexual assault examinations in accordance with U.S. Department of Justice, Office on Violence Against Women, National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents, and the U.S. Department of Justice, Office on Violence Against Women, National Training Standards for Sexual Assault Medical Examiners.

(*3*) *Certification.* (*i*) Provider must pass all selection and screening criteria.

(*ii*) Provider must submit documentation by trainer that healthcare provider has successfully completed SAFE training and is competent to conduct SAFEs independently. Documentation can be in the form of a certificate or be recorded in an electronic medical training tracking system.

(*iii*) Provider must obtain a letter of recommendation from her or his commander.

(*iv*) Upon successful completion of the selection, training, and certification requirements, the designated medical certifying authority will issue the certification for competency. Certification is good for 3 years from date of issue and must be reassessed and renewed at the end of the 3-year period.

(iii) Additional training topics for healthcare providers performing SAFEs:

(A) The SAFE Kit and DD Form 2911.

(B) Toxicology kit for suspected drug-facilitated cases.

(C) Chain of custody.

(D) Translation of findings.

(E) Proper documentation.

(F) Storage of evidence in Restricted Reports (*e.g.,* RRCN).

(G) Management of the alleged offender.

(H) Relevant local and State laws and restrictions.

(I) Medical treatment issues during deployments including remote location assistance to include: location resources including appropriate personnel, supplies (drying device, toluidine blue dye, colposcope, camera), standard operating procedures, location of SAFE Kit and DD Form 2911; and availability and timeliness of evacuation to echelon of care where SAFEs are available.

(J) How to provide testing, prophylactic treatment options, and follow-up care to possible exposure to human immunodeficiency virus (HIV), and other sexually transmitted diseases or infections (STD/Is).

(K) How to assess the risk of pregnancy; provide options for emergency contraception, and any follow-up care and referral services to the extent authorized by law.

(L) How to assess the need for mental health services and provisions for a referral, if necessary or requested by the victim.

(M) How to conduct physical and mental health assessment.

(N) How to deal with sexual assault-related trauma, to include:

(*1*) Types of injury.

(*2*) Photography of injuries.

(*3*) Behavioral health and counseling needs.

(*4*) Consulting and referral process.

(*5*) Appropriate follow-up.

(*6*) Drug or alcohol facilitated sexual assault, to include review of best practices, victim interview techniques, and targeted evidence collections.

(O) Medical record management.

(P) Legal process and expert witness testimony.

(5) ~~DoD~~ law enforcement (those elements of DoD components, to include MCIOs, authorized to investigate violations of the UCMJ) training shall:

(i) Include the responder training requirements in paragraph (g)(1) of this section for DoD law enforcement personnel who may respond to a sexual assault complaint.

(ii) Remain consistent with the guidelines published under the authority and oversight of the IG, DoD. In addition, DoD law enforcement training shall:

(A) Explain how to respond in accordance with the SAPR program.

(*1*) When to notify the command, SARC, and SAPR VA.

(*2*) How to work with SAPR VAs and SARCs, and medical personnel.

(*3*) In the event that law enforcement personnel respond to a 911 or emergency call involving sexual assault, how to refer the incident to the appropriate MCIO for investigation (after taking appropriate emergency response actions).

(B) Explain how to work with sexual assault victims, to include the effects of trauma on sexual assault victims. Ensure victims are informed of and accorded their rights, in accordance with DoDI 1030.2 and DoDD 1030.01 by contacting the VWAP.

(C) Take into consideration the victim's safety concerns and medical needs.

(D) Review IG policy and Military Service regulations regarding the legal transfer of the SAFE Kit and the retention of the DD Form 2911 or reports from civilian SAFEs in archived files. Explain that if the victim had a SAFE, the SAFE Kit will be retained for 5 years in accordance with DoDI 5505.18 and with section 586 of Public Law 112–81, as amended by section 538 of Public Law 113–291. Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. Personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 586 of the Public Law 112–81, as amended by section 538 of Public Law 113–291 and DoD regulations.

(E) Discuss sex offender issues.

(6) Training for MCIO agents assigned to investigate sexual assaults shall:

(i) Be detailed in IG policy.

(ii) Adhere to the responder training requirements in paragraph (g)(1) of this section for military and civilian criminal investigators assigned to MCIOs who may respond to a sexual assault complaint.

(iii) Remain consistent with the guidelines published under the authority and oversight of the IG, DoD. In addition, MCIO training shall:

(A) Include initial and annual refresher training on essential tasks specific to investigating sexual assault investigations that explain that these reports shall be included in sexual assault quarterly and annual reporting requirements found in § 105.16.

(B) Include IG policy and Military Service regulations regarding the legal transfer of the SAFE Kit and the retention of the DD Form 2911 or reports from civilian SAFEs in archived files. Explain that if the victim had a SAFE, the SAFE Kit will be retained for 5 years in accordance with DoDI 5505.18 and in accordance with section 586 of the Public Law 112–81, as amended by section 538 of Public Law 113–291. Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. Personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 586 of the Public Law 112–81, as amended by section 538 of Public Law 113–291 and DoD regulations.

(C) Explain how to work with victims of sexual assault.

(*1*) Effects of trauma on the victim to include impact of trauma and stress on memory as well as balancing investigative priorities with victim needs.

(*2*) Ensure victims are informed of and accorded their rights, in accordance with DoDI 1030.2 and DoDD 1030.01 by contacting the VWAP.

(*3*) Take into consideration the victim's safety concerns and medical needs.

(D) Explain how to respond to a sexual assault in accordance with to 32 CFR part 103, this part, and the assigned Military Service regulations on:

(*1*) Notification to command, SARC, and VWAP.

(*2*) Investigating difficult cases to include drug and alcohol facilitated sexual assaults, having multiple alleged offenders and sexual assaults in the domestic violence context as well as same-sex sexual assaults (male/male or female/female).

(E) Review of available research regarding false information and the factors influencing false reports and false information, to include possible victim harassment and intimidation.

(F) Explain unique issues with sex offenders to include identifying, investigating, and documenting predatory behaviors.

(G) Explain how to work with the SARC and SAPR VA to include SAPR VA and SARC roles, responsibilities, and limitations; victim services and support program; and MRE 514.

(7) Judge advocate training shall:

(i) Prior to performing judge advocate duties, adhere to the responder training requirements in paragraph (g)(1) of this section for judge advocates who are responsible for advising commanders on the investigation or disposition of, or who prosecute or defend, sexual assault cases.

(ii) Explain legal support services available to victims.

(A) Pursuant to the respective Military Service regulations, explain that each Service member who reports a sexual assault shall be given the opportunity to consult with legal assistance counsel and SVC/VLC, and in cases where the victim may have been involved in collateral misconduct, to consult with defense counsel.

(*1*) Provide information concerning the prosecution, if applicable, in accordance with DoD 8910.1–M. Provide information regarding the opportunity to consult with legal assistance counsel and SVC/VLC as soon as the victim seeks assistance from a SARC, SAPR VA, or any DoD law enforcement agent or judge advocate.

(*2*) Ensure victims are informed of their rights and the VWAP program, in accordance with DoDI 1030.2 and DoDD 1030.01.

(B) Explain the sex offender registration program.

(iii) Explain issues encountered in the prosecution of sexual assaults.

(A) Typologies (characteristics) of victims and sex offenders in non-stranger sexual assaults.

(B) Addressing the consent defense.

(C) How to effectively prosecute alcohol and drug facilitated sexual assault.

(D) How to introduce forensic and scientific evidence (*e.g.*, SAFE Kits, DNA, serology, toxicology).

(E) Evidentiary issues regarding MRE 412, 413, and 615 of the Manual for Courts-Martial, United States.

(F) How to advise victims, SAPR VAs, and VWAP about the military justice process, and MRE 514. Explain:

(*1*) Victims' rights during trial and defense counsel interviews (*e.g.*, guidance regarding answering questions on prior sexual behavior, interviewing parameters, coordinating interviews, case outcomes).

(*2*) In the case of a general or special court-martial, the trial counsel will cause each qualifying victim to be notified of the opportunity to receive a copy of the record of trial (not to include sealed materials unless approved by the presiding military judge or appellate court, classified information, or other portions of the record the release of which would unlawfully violate the privacy interests of any party, and without a requirement to include matters attached to the record under R.C.M. 1101(b)(3) in Manual for Courts-Martial, United States. A qualifying victim is an individual named in a specification alleging an offense under Articles 120, 120b, 120c, or 125 of the UCMJ (sections 920, 920b, 920c, or 925 of title 10 U.S.C) or any attempt to commit such offense in violation of Article 80 of the UCMJ (section 880 of title 10 U.S.C.) if the court-martial resulted in any finding of that specification.

(*3*) Guidance on victim accompaniment (*e.g.,* who may accompany victims to attorney interviews, what is their role, and what they should do if victim is being mistreated).

(*i*) Defense counsel must request interviews through the victim's counsel if the victim is represented by counsel.

(*ii*) The victim has the right to be accompanied to the Defense interview, in accordance with section 846 of title 10, U.S.C.

(*4*) MRE 412 of the Manual for Courts-Martial, United States, and its application to an Article 32 preliminary hearings.

(*5*) Protecting victim privacy (*e.g.,* access to medical records and conversations with SARC or SAPR VA, discovery consequences of making victim's mental health an issue, MRE 514).

(8) Legal Assistance Attorney training shall adhere to the requirements of annual training in paragraph (c)(2) of this section. Attorneys shall receive training in order to have the capability to provide legal assistance to sexual assault victims in accordance with the USD(P&R) Memorandum. Legal assistance attorney training shall include:

(i) The VWAP, including the rights and benefits afforded the victim.

(A) The role of the VWAP and what privileges do or do not exist between the victim and the advocate or liaison.

(B) The nature of the communication made to the VWAP as opposed to those made to the legal assistance attorney.

(ii) The differences between the two types of reporting in sexual assault cases.

(iii) The military justice system, including the roles and responsibilities of the trial counsel, the defense counsel, and investigators. This may include the ability of the Government to compel cooperation and testimony.

(iv) The services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

(v) The availability of protections offered by military and civilian restraining orders.

(vi) Eligibility for and benefits potentially available as part of transitional compensation benefits found in section 1059 of title 10, U.S.C., and other State and Federal victims' compensation programs.

(vii) Traditional forms of legal assistance.

(9) SVC/VLC will adhere to the requirements of annual training in paragraph (c)(2) of this section, to include explaining the nature of the relationship between a SVC/VLC and a victim will be the relationship between an attorney and client. In accordance with section 1044e of title 10 U.S.C., SVC/VLC training will include providing legal consultation regarding:

(i) Potential criminal liability of the victim, if any, stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

(ii) The Victim Witness Assistance Program, including:

(A) The rights and benefits afforded the victim.

(B) The role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison.

(C) The nature of communication made to the liaison in comparison to communication made to an SVC/VLC or a legal assistance attorney in accordance with section 1044 of title 10 U.S.C.

(iii) The responsibilities and support provided to the victim by the SARC or a SAPR VA, to include any privileges that may exist regarding communications between those persons and the victim.

(iv) The potential for civil litigation against other parties (other than the United States).

(v) The military justice system, including (but not limited to):

(A) The roles and responsibilities of the trial counsel, the defense counsel, and investigators.

(B) Any proceedings of the military justice process which the victim may observe.

(C) The U.S. Government's authority to compel cooperation and testimony.

(D) The victim's responsibility to testify and other duties to the court.

(vi) Accompanying the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.

(vii) Eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

(viii) Legal consultation and assistance:

(A) In personal civil legal matters in accordance with section 1044 of title 10 U.S.C.

(B) In any proceedings of the military justice process in which a victim can participate as a witness or other party.

(C) In understanding the availability of, and obtaining any protections offered by, civilian and military protective or restraining orders.

(D) In understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of title 10 U.S.C. and other State and Federal victims' compensation programs.

(10) Chaplains, chaplain assistants and religious personnel training shall:

(i) Adhere to the responder training requirements in paragraph (g)(1) of this section.

(ii) Pre-deployment SAPR training shall focus on counseling services needed by sexual assault victims and offenders in contingency and remote areas.

(iii) Address:

(A) Privileged communications and the Restricted Reporting policy rules and limitations, including legal protections for chaplains and their confidential communications, assessing victim or alleged offender safety issues (while maintaining chaplain's confidentiality), and MRE 514.

(B) How to support victims with discussion on sensitivity of chaplains in addressing and supporting sexual assault victims, identifying chaplain's own bias and ethical issues, trauma training with pastoral applications, and how to understand victims' rights as prescribed in DoDI 1030.2 and DoDD 1030.01.

(C) Other counseling and support topics.

(*1*) Alleged Offender counseling should include: assessing and addressing victim and alleged offender safety issues while maintaining confidentiality; and counseling an alleged offender when the victim is known to the chaplain (counseling both the alleged offender and the victim when there is only one chaplain at a military installation).

(*2*) Potential distress experienced by witnesses and bystanders over the assault they witnessed or about which they heard.

(*3*) Counseling for SARCs, SAPR VAs, healthcare personnel, chaplains, JAGs, law enforcement or any other professionals who routinely work with sexual assault victims and may experience secondary effects of trauma.

(*4*) Providing guidance to unit members and leadership on how to mitigate the impact that sexual assault has on a unit and its individuals, while keeping in mind the needs and concerns of the victim.

■ 15. Amend § 105.15 by revising paragraphs (a)(1) and (b) to read as follows:

§ 105.15 Defense Sexual Assault Incident Database (DSAID).

(a) *Purpose.* (1) In accordance with section 563 of Public Law 110–417, DSAID shall support Military Service SAPR program management and DoD SAPRO oversight activities. It shall serve as a centralized, case-level database for the collection and maintenance of information regarding sexual assaults involving persons covered by this part. DSAID will include information, if available, about the nature of the assault, the victim, the alleged offender, investigative information, case outcomes in connection with the allegation, and other information necessary to fulfill reporting requirements. DSAID will serve as the DoD's SAPR source for internal and external requests for statistical data on sexual assault in accordance with section 563 of Public Law 110–417. The DSAID has been assigned OMB Control Number 0704–0482. DSAID contains information provided by the Military Services, which are the original source of the information.

* * * * *

(b) *Procedures.* (1) DSAID shall:

(i) Contain information about sexual assaults reported to the DoD involving persons covered by this part, both via Unrestricted and Restricted Reporting options.

(ii) Include adequate safeguards to shield PII from unauthorized disclosure. The system will not contain PII about victims who make a Restricted Report. Information about sexual assault victims and subjects will receive the maximum protection allowed under the law. DSAID is accessible only by authorized users and includes stringent user access controls.

(iii) Assist with annual and quarterly reporting requirements, identifying and managing trends, analyzing risk factors or problematic circumstances, and taking action or making plans to eliminate or to mitigate risks. DSAID shall store case information. Sexual assault case information shall be available to DoD SAPRO for SAPR program oversight (data validation and quality control), study, research, and analysis purposes. DSAID will provide a set of core functions to satisfy the data collection and analysis requirements for the system in five basic areas: data warehousing, data query and reporting, SARC victim case management functions, subject investigative and legal case information, and SAPR program administration and management.

(iv) Receive information from the MCIO case management systems or direct data entry by authorized Military Service personnel.

(v) Contain information pertaining to all victims of sexual assault reported to the DoD through filing a DD Form 2910 or reporting to an MCIO. When a Service member is alleged to have sexually assaulted a civilian or foreign national, the SARC will request and the MCIO will provide the victim's name, supporting PII, and the MCIO case file number, to include the unique identifier for foreign nationals, for entry into DSAID.

(vi) A SARC will open a case in DSAID as an "Open with Limited Information" case when there is no signed DD 2910 (*e.g.,* an independent investigation or third-party report, or when a civilian victim alleged sexual assault with a Service member) to comply with Section 563(d) of Public Law 109–364 and to ensure system accountability.

(2) The DD Form 2965 may be used as a tool for capturing information to be entered into DSAID when direct data entry is not possible, but the DD Form 2965 is not meant to be retained as a permanent form.

(i) SARCs and SAPR VAs will be the primary users of the DD Form 2965, which may be completed in sections as appropriate. Applicable sections of the form may also be used by MCIO and designated legal officer, if applicable, to provide required investigative and disposition information to SARCs for input into DSAID. Victims will not complete the DD Form 2965.

(ii) In accordance with General Records Schedule 20, Item 2(a)4, users will destroy the DD Form 2965 immediately after its information has been inputted into DSAID or utilized for the purpose of developing the 8-day incident report (Public Law 113–66). In all cases, the DD Form 2965 will not be retained for longer than 8 days and will not be mailed, faxed, stored, or uploaded to DSAID. In a Restricted Report case, a copy of the DD Form 2965 will not be provided to commanders.

* * * * *

■ 16. Amend § 105.16 by:

■ a. In paragraph (a) introductory text, removing "in accordance with section 1631(d) of Public Law 111–383" and adding in its place "in accordance with guidance from the USD(P&R) and section 1631(d) of Public Law 111–383."

■ b. Revising paragraph (a)(4).

■ c. Adding paragraphs (a)(6) and (7).

■ d. In paragraph (b) introductory text, removing "comprehensive reporting" and adding in its place "comprehensive reporting and metrics tracking."

■ e. In paragraph (b)(1), removing "January 31" and adding in its place "February 15."

■ f. In paragraph (b)(2), removing "April 30" and adding in its place "May 15."

■ g. In paragraph (b)(3), removing "July 31" and adding its place "August 15."

■ h. In paragraph (d), removing "April 30" and adding in its place "April 30 of each year."

The revision and addition read as follows:

§ 105.16 Sexual assault annual and quarterly reporting requirements.

(a) * * *

(4) Matrices for Restricted and Unrestricted Reports of the number of sexual assaults involving Service members that include case synopses, and disciplinary actions taken in substantiated cases and relevant information. See § 105.17.

* * * * *

(6) May include analyses of surveys administered to victims of sexual assault on their experiences with SAPR victim assistance and the military health and justice systems.

(7) Analysis and assessment of the disposition of the most serious offenses identified in Unrestricted Reports in accordance with section 542 of Public Law 113–291.

* * * * *

§ 105.17 [Amended]

■ 17. Amend § 105.17 by:

■ a. In the introductory text, removing "definitions" and adding in its place "terms."

■ b. In paragraph (a) introductory text, removing "to provide" and adding in its place "and provided" and removing "to take" and adding in its place "which may include."

■ c. In paragraph (a)(1), removing "Actions against the subject may include court-martial charge preferral, Article 15 UCMJ punishment, nonjudicial punishment" and adding in its place "Actions against the subject may include initiation of a court-martial, nonjudicial punishment."

■ d. In paragraph (b) introductory text, adding "(section 815 of title 10 U.S.C.)" after "UCMJ."

■ e. In paragraph (b)(1)(i):

■ i. Adding "(sections 920 and 925 of title 10, U.S.C.)" after "Articles 120 and 125 of the UCMJ."

■ ii. Adding "(section 880 of title 10, U.S.C.)" after "Article 80 of the UCMJ."

■ iii. Redesignating footnote 13 as footnote 10.

■ f. In paragraph (b)(1)(ii), adding "(section 815 of title 10, U.S.C.)" after "Article 15 of the UCMJ."

■ h. In paragraph (b)(2) introductory text, removing "non-judicial" and adding in its place "nonjudicial."

■ i. In paragraph (b)(2)(ii), adding "(section 815 in title 10, U.S.C.)" after "(Article 15, UCMJ)."

■ j. In paragraph (c)(4), adding "(section 943 of title 10, U.S.C.)" after "Article 43 of the UCMJ."

■ k. In paragraph (e) introductory text, removing "are" and adding in its place "is."

■ 18. Revise § 105.18 to read as follows:

§ 105.18 Information collection requirements.

(a) The DSAID, the DD Form 2910, and the DD Form 2965, "Defense Sexual Assault Incident Database (DSAID) Data Form," referred to in this part, have been assigned OMB control number 0704–0482 in accordance with the procedures in Volume 2 of DoD Manual 8910.01.

(b) The annual report regarding sexual assaults involving Service members and improvement to sexual assault prevention and response programs referred to in § 105.5(f); § 105.7(a)(9), (10), and (12); § 105.9(c)(8)(ii) and (f)(9); and § 105.16(a) and (d) is submitted to Congress in accordance with section 1631(d) of Public Law 111–383 and is coordinated with the Assistant Secretary of Defense for Legislatives Affairs in accordance with the procedures in DoDI 5545.02.

(c) The quarterly reports of sexual assaults involving Service members referred to in §§ 105.5, 105.7, 105.14, 105.15, and 105.16 are prescribed by DoDD 5124.02 and have been assigned a DoD report control symbol in accordance with the procedures in Volume 1 and Volume 2 of DoD Manual 8910.01.

(d) The Service Academy sexual assault survey referred to in § 105.16(c) has been assigned DoD report control symbol in accordance with the procedures in Volume 1 and Volume 2 of DoD Manual 8910.01.

(e) The Survivor Experience Survey, referred to in § 105.16(a) and conducted by the Defense Manpower Data Center (DMDC), has been assigned the Report Control Symbol DD–P&R(AR)2554 in accordance with the procedures in DoD Manual 8910.01, Volume 2.

Dated: September 7, 2016.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

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Part IV

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 424

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[Docket Nos. FWS–HQ–ES–2015–0016 and DOC 150506429–6767–04; 4500030113]

RIN 1018–BA53; 0648–BF06

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services), finalize changes to the regulations concerning petitions, to improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petition process to support species conservation. Our revisions to the regulations clarify and enhance the procedures by which the Services evaluate petitions under section 4(b)(3) of the Endangered Species Act of 1973, as amended. These revisions will also maximize the efficiency with which the Services process petitions, making the best use of available resources.

DATES: This rule is effective October 27, 2016.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703/358–2171; facsimile 703/358–1735; or Angela Somma, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301/427–8403. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Procedure Act (APA; 5 U.S.C. 553(e)) gives interested persons the right to petition for the issuance, amendment, or repeal of an agency's rule. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) use the rulemaking process in our administration of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended, in particular section 4. Section 4(b)(3) of the Act establishes deadlines and standards for making findings on petitions to conduct rulemakings under section 4. Thus, in this context, the primary purpose of the Act's petition process is to empower the public, in effect, to direct the attention of the Services to (1) species that may be imperiled and may warrant listing, but whose status the Services have not yet determined, (2) changes to a listed species' threats or other circumstances that may warrant reclassification of that species' status (*i.e.,* "downlisting" the species from an endangered species to a threatened species, or "uplisting" from a threatened species to an endangered species) or delisting of the species (*i.e.,* removing the species from the Federal List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants), or (3) information that would support making revisions to critical habitat designations. The petition process is a central feature of the Act, and serves a beneficial public purpose.

Purpose of Revising the Regulations

The Services are revising the regulations at 50 CFR 424.14 concerning petitions to improve the content and specificity of petitions in order to enhance the efficiency and effectiveness of the petition process to support species conservation. Our revisions to § 424.14 clarify and enhance the procedures by which the Services will evaluate petitions under section 4(b)(3) of the Act (16 U.S.C. 1533(b)(3)). The revised regulations pertaining to the petition process will provide greater clarity to the public on the petition-submission process, which will assist petitioners in providing complete petitions. These revisions will also maximize the efficiency with which the Services process petitions, making the best use of available resources. These changes will improve the quality of petitions through clarified content requirements and guidelines, and, in so doing, better focus the Services' resources on petitions that merit further analysis. In the following discussion, we first summarize the comments received during the two public comment periods; we then summarize the changes and explain the benefits of making these changes.

Summary of Comments and Recommendations

In the proposed rule published on May 21, 2015 (80 FR 29286), we requested that all interested parties submit written comments on the proposal by July 20, 2015. We did not receive any requests for a public hearing. We received several requests for an extension of the public comment period, and on July 17, 2015 (80 FR 42466), we extended the public comment period to October 18, 2015. In total, we received 347 comments.

After further consideration of the issues, we revised the proposed rule and reopened a comment period for an additional 30 days on April 21, 2016 (81 FR 23448), to allow the public an opportunity to comment on proposed changes made in response to the comments we received on the original proposal. In that revised rule, we also requested comment on the information collection aspects of the proposed rule under the Paperwork Reduction Act. We received 27 comments on the revised proposed rule. All substantive information and relevant comments provided during the comment periods have been considered, and where appropriate, have either been incorporated directly into this final rule or addressed in the more specific responses to comments below. Comments are grouped into categories.

General Comments

Comment (1): Several commenters expressed concern that the proposal would create a substantial burden and restriction of petitioners' rights under various authorities, including the First Amendment, APA, and Executive Order 13563.

Our Response: These regulations do not restrict or limit a citizen's right to petition the Services, but rather clarify the petition process for the public by identifying what would make the process most efficient and effective for both citizens and agencies. Although the First Amendment to the U.S. Constitution guarantees members of the public the rights to, among other things, "petition the Government for a redress of grievances" and to express their views, it does not require a Federal agency to treat every such expression as a petition under the APA. The APA requires Federal agencies to give "an interested person the right to petition for the issuance, amendment, or repeal of a rule," 5 U.S.C. 553(e), but does not speak to the particulars of the petition process. As a result, agencies have discretion to design a reasonable and efficient process for receiving and considering petitions. Many Federal agencies have developed regulations to govern the petition process, including setting out requirements for the content and informational support of petitions similar to those included in this final rule. See Jason A. Schwartz and Richard L. Revesz, "Petitions for Rulemaking: Final Report to the Administrative Conference of the United States" (Nov. 5, 2014). In further response to the comment, we note that executive orders such as E.O. 13563 set out guidance for Federal agencies, but do not create substantive or procedural rights in any party.

Comment (2): A commenter noted that general claims about efficiency do not justify restrictions on fundamental rights.

Our Response: The revised regulations do not restrict the right of the public to petition the Services under the Act. Rather, they provide clarification to petitioners as to what they must include in a petition in order for the Services to be able to evaluate whether or not the petition contains substantial information indicating that the petitioned action may be warranted. As noted above, agencies have discretion to devise reasonable requirements as to the format, content and informational support of petitions to ensure that agency resources are used effectively.

Comment (3): A commenter noted that the Services' proposed rule departs significantly from the case law that states the threshold for a substantial 90-day finding is low, and therefore should not necessitate a petitioner assembling all the information available on a species. The Services should make a preliminary finding on a petition without access to all of the scientific information that could be discovered; that approach is more appropriate in a status review.

Our Response: The Act places the obligation squarely on the petitioner to present the requisite level of information to meet the "substantial information" test to demonstrate that the petitioned action may be warranted. Therefore, in determining whether the petition presents substantial information, the Services are not required to seek out any supporting source materials beyond what is included with a given petition. As a result, the Services will not base their 90-day findings on any claims for which supporting source materials have not been provided in the petition. However, as discussed in more detail below in the section, *Findings on a Petition to List, Delist, or Reclassify—Paragraph (h),* the Services are confirming that they have the discretion to consider, as appropriate, readily available information that provides context necessary to evaluate whether the information that a petition presents is timely and up-to-date, and whether it is reliable or representative of the available information on that species, in making a determination as to whether the petition presents substantial information. If the Services were to consider petitions in a vacuum, this could lead to consequences that would be at odds with the purposes of the Act by diverting agency resources to matters that only appear superficially to meet the statutory and regulatory standards for further consideration. In these regulatory amendments, the Services have crafted a balanced approach that will ensure that the Services may evaluate the information readily available to us, without conducting a more wide-ranging collection of information and analysis more appropriate for a 12-month status review.

Comment (4): Several commenters expressed concern that the initially proposed requirements could potentially be cost-prohibitive with respect to the provisions for State pre-coordination and gathering all relevant data. Thus, whether an interested person submits a petition to the Services may be influenced by the financial capacity of the petitioner, and not based on the best scientific evidence available.

Our Response: Based on public feedback and reconsideration of the issues, the Services revised our original proposal, as discussed in our April 21, 2016 revised proposed rule (81 FR 23448). In the re-proposal, we modified the originally proposed requirement for pre-coordination with States and the proposed requirement to provide all relevant data. For further discussion of these changes, please see comments and responses below under *Paragraph (b)—Requirement for State Coordination Prior to Petition Submission to FWS* and *Paragraph (c)—All Relevant Data Certification.*

Comment (5): A commenter stated that the Services should provide examples of good and bad petitions.

Our Response: In the revised regulation, we provide greater clarity and detail as to what elements make up a thorough, complete, and robust petition. The facts of each petition may vary significantly, so it is difficult to extrapolate that across the board. However, each petition and subsequent finding is available on *http://www.regulations.gov,* so the public can evaluate the petitions and findings themselves.

Comment (6): A commenter stated that there should be a nominal filing fee for each petition. This requirement could serve as a deterrent for filing hundreds of petitions at a time.

Our Response: Petitioning the Services is a right the public has under the Act and the APA. Neither of those authorities provides for assessing fees. We conclude that the petition process is not like an application for a permit, where charging a fee may be appropriate; petitioners do not receive any tangible authorizations or rights through submission of a petition. Instead, the intent of the petition process is to allow the public to direct the Services' attention to a matter concerning the status of a species under their jurisdictions and authority.

Comment (7): A commenter stated that the Services should publish in the **Federal Register** notices indicating that they received petitions to list, delist, or reclassify a species, or publish the petitions themselves. Further, the Services should post all information from a petition under review on a public Web site if a species status review is begun.

Our Response: The Services are required, to the maximum extent practicable, to reach an initial finding on a petition within 90 days of receiving the petition and to promptly publish such finding in the **Federal Register**. The Act does not include a requirement to publish notices of the *receipt* of a petition. To publish separate **Federal Register** notices simply to announce our receipt of petitions would unnecessarily burden this process and take resources away from evaluating petitions and conducting higher-priority conservation work. The Services provide information on publicly accessible Web sites showing all currently active petitions (see *https://ecos.fws.gov/ecp/report/table/petitions-received.html* and *http://www.nmfs.noaa.gov/*), and we make the petitions available as supporting information on *http://www/regulations.gov* when we publish our 90-day findings.

Comment (8): A commenter stated that the Services should set up a Web site for electronic submission of petitions to offset any potential increased cost of printing and mailing of multiple petitions.

Our Response: We currently receive many petitions electronically by email, and encourage petitioners to submit petitions electronically as well. Current contact information for both Services may be found on their respective Web sites, at *https://www.fws.gov/ecological-services/map/index.html* and *http://www.nmfs.noaa.gov/pr/contact.htm.*

However, given the file size of source information typically provided with petitions, it may not always be practicable to provide source material by email. In such cases, we recommend that petitioners mail appropriate digital-storage media (or hard copies, if preferable to the petitioner) to the appropriate office. This should help reduce printing costs for petitioners. Further, we are not requiring that copies of petitions be mailed to States.

Comment (9): A commenter noted that a similar alteration in the citizen petition process in a 1996 policy was rejected by the Ninth Circuit Court of Appeals and the District of Columbia Court (*Ctr. For Biological Diversity* v. *Norton,* 254 F.3d 833 (9th Cir. 2001); *Am. Lands Alliance* v. *Norton,* 360 F. Supp. 2d 1, 6 (D.D.C. 2003)). The proposed rule change at issue here has the same effect.

Our Response: We have revised the language of the rule to make clear that the cases the commenter references do not apply to this rule. Those cases involved a provision of the 1996 Petition Management Guidance (PMG) that stated, "[A] petition to list a candidate species is redundant and will be treated as a second petition." The PMG also provided that a second petition would require only a prompt response informing the submitter of the prior petition, and would be treated as a comment on the previous petition. The courts held that this "redundancy" provision in the PMG violated the Act, because it allowed the Secretary to avoid explaining why the petitioned action was precluded, did not create a sufficient record to allow for meaningful judicial review of any finding on a "redundant" petition, and circumvented the statutory requirement that the Service comply with deadlines for making petition findings. In contrast, this rule, as revised, does not provide for treating petitions to list a candidate species as second petitions. Rather, § 424.14(h)(1)(iii) provides that any previous reviews or findings contributes to the context for making a petition finding:

The "substantial scientific or commercial information" standard must be applied in light of any prior reviews or findings the Services have made on the listing status of the species that is the subject of the petition. Where the Services have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on the Services' own initiative), the Services will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action, a petitioned action generally would not be considered to present substantial scientific and commercial information indicating that the action may be warranted unless the petition provides new information not previously considered.

As explained in response to *Comment (55),* below, all requests which meet the requirements of § 424.14(c) are considered petitions, will be evaluated, and a finding will be made. Therefore, § 424.14(h)(1)(iii) does not suffer from the deficiencies that the courts identified with respect to the "redundancy" provision in the PMG. The Services will still evaluate and make petition findings on all petitions they receive regardless of whether the species is already a candidate or a finding on a petition requesting the same action has already been made. In making such a petition finding, we would have created a record that would allow for meaningful review not only of any determination that listing is warranted, but also of any determination that listing is precluded by higher-priority listing actions and we are making expeditious progress towards adding qualified species to the lists. Finally, the findings on such a petition will still be subject to the Act's statutory deadlines.

Comment (10): A commenter stated that petitioners should be advised if their request was screened out and provided with the reasons for the petition rejection. The Services could develop a form letter indicating which mandatory requirements the petition was missing. This way, a petitioner may easily understand which items of information should have been included in the petition but were not.

Our Response: Section 424.14(e)(1) of the revised proposed rule (81 FR 23448; April 21, 2016) (§ 424.14(f)(1) in this rule) does provide that, if the Services reject a petition for not meeting the requirements of proposed § 424.14(b) (§ 424.14(c) in this rule), they will, within a reasonable timeframe, notify the sender and provide an explanation of the rejection. It further provides that the Services will generally reject the request without making a finding; therefore, the submitter could rectify the deficiencies in the petition and resubmit it. We appreciate the suggestion of form letters, and will identify which elements are missing in our responses.

Comment (11): A commenter stated that the Services propose to replace the title "the Secretary" or "the Secretaries" with "the Services" throughout the regulation text because the Services are the designees of the Secretaries of Commerce and the Interior in implementing the Act. The commenter disagreed with the change. Although the Services are the agencies designated to implement the Act, the Secretaries are those designated and confirmed by Congress to serve on the Cabinet and responsible for carrying out those specific acts given to the Executive Branch by the Legislative Branch of the government.

Our Response: While we agree that the authority for making decisions under the Act ultimately rest with the Secretaries of Commerce and the Interior, the Secretaries have formally delegated authority to make petition findings to the Services. As such, we have maintained the language as "the Services."

Paragraph (b)—Requirement for State Coordination Prior To Petition Submission to FWS

Comment (12): We received many comments raising concerns with the requirement for State pre-coordination, as originally proposed on May 21, 2015 (80 FR 29286). These included concerns that the provision would be too burdensome, potentially requiring a petitioner to mail thousands of pages of petition material; it is outside the responsibility of the petitioner to do this coordination; it is the responsibility of the Services to coordinate with the States; it could result in adversarial relationships between petitioners and States; and it would slow the petition process. Concerns were also expressed that the coordination requirement could create a significant amount of additional work for State agencies. In addition, most State commenters requested a longer coordination period, as long as 120 days.

Our Response: We have removed the requirement for coordination from this final rule, and replaced it with the simpler requirement that a prospective petitioner send a notification letter to the State(s) within the current range of the species stating the intent to file a petition with either Service at least 30 days prior to filing the petition. This notification will allow States time and opportunity to send data directly to the Services, should they desire. This change acknowledges the special role of States as evidenced in section 6 of the Act while not overly burdening petitioners.

While not required under this final rule, we encourage members of the public who are preparing a petition to coordinate with the appropriate State agencies when gathering information; this coordination will help in preparing a complete petition with adequate information. Additionally, we value the input and expertise of our State partners and wish to provide them the opportunity to be aware that species in their States are the subject of petitions and to provide pertinent information on those species to the Services, should they have such information and wish to share it.

Comment (13): Several States and other commenters expressed concerns that the Services removed the originally proposed requirement for full State pre-coordination, which would have assured the States a role in the petition process.

Our Response: Affected States will have the opportunity to submit data and information to the Services in the 30-day period before a petition is filed. Further, § 424.14(h)(1)(ii) of this revised regulation allows us to consider data and information readily available at the time the finding is made. Because information received after the petition is filed would be readily available at the time the finding is made, the Services could consider any information received up until the time the Services make their findings (including any data and information States have voluntarily sent to the Services in response to the notification letters).

The requirement of a petitioner to notify States at least 30 days prior to filing a petition is a minimum. We encourage petitioners to notify States earlier, even as soon as they contemplate petitioning a species for protection under the Act. Further, we encourage petitioners to contact State wildlife agencies and consult State Web sites as valuable sources of information on their subject species, and incorporate any such information in their petitioned requests.

The use of such information, up until the time the Services make their findings, is a change from prior practice. However, we find that this change will expand the ability of the States and any interested parties to take the initiative of submitting input and information for the Services to consider in making 90-day findings, thereby making the petition process both more efficient and more thorough. In addition, this interpretation is consistent with the statutory purpose and with case law. It is consistent with the statutory purposes of the Act because providing for consideration of all information, regardless of when it was received, will put the Services in a better position to make the statutorily required finding—whether or not the petition presents substantial information indicating that the petitioned action may be warranted—by providing factual context in which to evaluate the information provided in the petition. Further, nothing in the Act precludes consideration of information up until the time a decision is made. It is consistent with case law because it stops short of allowing the Services to solicit new information for purposes of a 90-day finding, which courts have held to be beyond the scope of a 90-day finding. *E.g., Colorado River Cutthroat Trout* v. *Kempthorne,* 448 F. Supp. 2d 170 (D.D.C. 2006). Please see *Findings on a Petition to List, Delist, or Reclassify—Paragraph (h)* under Summary of Changes to Previous Regulations at 50 CFR 424.14, below, for further discussion.

Comment (14): A commenter expressed concern that the changed requirement for State coordination undermines our expectation that petitioners present unbiased and balanced information. If petitioners are not required to seek State information, they may keep their awareness of the complete information intentionally low.

Our Response: While we encourage prospective petitioners to contact State wildlife agencies for information on their subject species as part of creating a robust, well-balanced petition, we conclude that at the 90-day finding stage, it is not appropriate to expect petitioners to coordinate on the contents of a petition with another entity.

Comment (15): A commenter requested that the Services increase the timeframe for States to respond to a petition to at least 60 days.

Our Response: The Services think that a minimum of 30-day notification prior to filing a petition provides time for States to engage the Services during the petition process without substantially increasing the likelihood that the Services will be unable to meet the 90-day timeframe. Further, while we encourage States to submit any information within this 30-day time period, the States (and any interested parties) are able to submit information up until the finding is made (please see our response to *Comment (13),* above).

The requirement that a petitioner notify States at least 30 days prior to filing a petition is, as noted, a minimum. Also, we encourage petitioners to contact State wildlife agencies and consult State Web sites as valuable sources of information on their subject species, and incorporate any such information in their petitioned requests.

Comment (16): Several commenters expressed concern that the revised requirement for State coordination would create a burden on State agencies, because it would shift the States' role from determining what information was missing from a petition to directing their limited resources towards providing potentially all of the relevant information on a petitioned species, even if this is redundant with what the petitioner eventually provides.

Our Response: This final rule does not require the States to submit information to the Services; whether they do so will be their choice. If a relevant State would like to have a copy of the petition, they may ask petitioners or the Services for a copy, or obtain a copy from the respective Service's Web sites after the petition has been filed.

Comment (17): Commenters noted that nothing in the Act requires consultation (with respect to petitions) with anyone. A requirement to notify a third party, specifically State agencies, prior to the submission of a petition under the Act or the APA is without legal support. The APA provides the right of each citizen to petition the government, and the Act provides the right to petition for the listing, delisting, or reclassifying of a species.

Our Response: Section 4(b)(1)(A) and 6 of the Act require the Services to take into consideration those efforts by States to protect species and their habitats and coordinate with States on the conservation of listed species and species at risk. Our modified language requiring petitioners to notify State wildlife agencies of their intent to file a petition with respect to a species found in those States with the appropriate Service assists us in meeting the requirements of the Act regarding State coordination. Our revised requirement for State coordination does not infringe on the right of the public to submit petitions under section 4 of the Act. Rather, it allows States the opportunity, should they choose, to participate in the petition process by providing information to the Services, while at the same time removing any potentially onerous requirements on petitioners.

Comment (18): Several commenters asked how they determine to which State agencies they must send letters of intent to file a petition. One commenter seemed to suggest that the Services provide each State the opportunity to designate all appropriate agencies to receive a copy of the petition, and maintain a master contact list for petitioners to access when contacting States.

Our Response: Petitioners must send letters to the State(s) that are in the known, current geographic range of the species. Section 3(18) of the Act defines the term "State agency" to mean any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State. The Association of Fish and Wildlife Agencies (AFWA), which is a professional association for State, provincial and territorial fish and wildlife agencies, is a helpful resource in determining contact information for State agencies. Further, in researching the information to support the petitioned request, the petitioner should look for range information, and thereby find the State(s) in which the species occurs. We note that when there are multiple range States and in cases where there is some ambiguity about the extent of range, we would not envision rejecting a petition because the petitioner did not notify every State in question, as long as it appears that the petitioner made an attempt to do so.

Comment (19): A commenter recommended that, to further reduce the burden on petitioners, petitioners be allowed to send (email) notification letters to State wildlife agencies electronically instead of limiting the requirement to mailing hard copy letters.

Our Response: We appreciate this suggestion, and clarify in this rule that petitioners are to include copies of notification letters or emails as a required part of their petition submission.

Comment (20): One commenter stated that the minimum 30-day requirement for notifying States of intent to file a petition improperly extends the mandatory timelines that Congress established. Another commenter stated that a required 30-day coordination timeframe with States could be to the detriment of imperiled species, especially those petitioned for emergency listing.

Our Response: The Act directs the Services to make a finding on whether a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted within 90 days of the receipt of the petition, to the maximum extent practicable. The 30 days' notice that will be given under the regulations prior to submitting a petition is by definition not part of the 90-day statutory timeframe that begins to run from receipt of the petition. Further, the State notification requirement need not delay petitioners from filing their petitions close to the time they would have done so in the absence of the notification requirement. In fact, we encourage prospective petitioners to contact States notifying them of their intent to file a petition on a subject species as soon as they contemplate doing so. Thus, some or all of the notification period could run concurrently with the time that the petitioner is researching and preparing the petition submission.

Petitioners may request listing on an emergency basis; however, the Services are only required to treat such requests as a regular listing petition, and to follow the statutory timelines for responding to the petition as a regular listing petition. At any time, if one of the Services determines that there is an emergency posting a significant risk to the well-being of a species, it is within that Service's discretion under Section 4(b)(7) whether to consider promulgating a regulation that takes effect immediately.

Comment (21): A commenter noted that petitions regarding species under NMFS jurisdiction should also be subjected to the provision of pre-coordination with States within the range of the petitioned species. They stated that the rationale of increased logistical difficulties for petitions on NMFS species is not a valid argument because many terrestrial and freshwater species under FWS jurisdiction are also wide-ranging and would theoretically present the same logistical problems.

Our Response: In our revised proposed rule (81 FR 23448; April 21, 2016), we revised the requirement for petitioners to simply notify States of their intent to file petitions at least 30 days prior to submission of petitions to the Services, and we applied this requirement to petitions sent to either Service. Therefore, this final rule applies to submissions to both NMFS and FWS.

Comment (22): Several commenters were opposed to the provision in the original proposal requiring the petitioner to certify inclusion of data from State Web sites, as the information on those sites is superficial and not adequate for a species review.

Our Response: After reviewing public comment on the May 21, 2015, proposed rule (80 FR 29286), we developed a revised proposal that removed this provision. This final regulation in no way limits petitioners to the sources of information they may consult and include in petitions. We encourage petitioners to use a broad range of source materials, in order to create a well-balanced presentation of facts, including information provided by researchers, species experts, State data, and Tribal information, as well as other sources.

Comment (23): A commenter encouraged the Services to reject petitions that do not include data and information from the affected States because, in their view, these would not present a complete, balanced representation of the relevant facts.

Our Response: As noted, we encourage petitioners to use a broad range of source materials, including information from State wildlife agencies, which often have considerable experience and information on the species within their boundaries. However, we would evaluate the petition and supporting evidence on a case-by-case basis to determine whether it presents substantial information to indicate that the action may be warranted. We note that, in this final rule, § 424.14 (d)(5) and (e)(6) state that, in determining whether a petition presents substantial information indicating that the petitioned action may be warranted, one of the factors the Services will consider is whether the petition presents a complete and balanced representation of the relevant facts. Because it is not required in section (c), the inclusion of a complete and balanced representation of the relevant facts is not part of the essential information that is required for all petitions to be accepted as a petition. Rather, whether such a presentation is included is one of the factors the Services will consider in making our finding of whether a petition presents substantial information that the requested action may be warranted. We nevertheless encourage petitioners to check for availability of such information, to contact State wildlife agencies or consult State Web sites in researching species that are the subject of their requests, and to include in the petition any State information that would contribute to providing the detailed narrative and/or citations required under § 424.14(c)(4) and (c)(5).

Comment (24): A commenter noted that the discretion for the Services to choose whether or not to consider information provided by States is a disincentive to the States to undertake the considerable work necessary to provide information.

Our Response: The Services appreciate all information and data provided by States, and generally intend to consider timely information provided by the States, along with other readily available information, to put the information in the petition in context. Further, following substantial 90-day findings, the Services will carefully evaluate all information provided in conducting subsequent status reviews. For further discussion, please see *Findings on a Petition to List, Delist, or Reclassify—Paragraph (h),* in Summary of Changes to Previous Regulations at 50 CFR 424.14, below.

Comment (25): A commenter suggested that the Services add a requirement that petitioners must inform the affected States of the actual date that they intend to submit their petitions to one of the Services. If, for example, a petitioner gives a State notice 12 months before submitting a petition and that State provides data to the Services within 30 days of receiving that notice, the State's data that the Services ultimately use to consider the petition could be outdated.

Our Response: We encourage petitioners to give the States an estimate of when the petitioner will be submitting the petition to the Services, but we do not require it. While we appreciate the commenter's concern that the Services be provided the best, most current information, we do not think it will pose a problem if a petitioner chooses to notify States of their intent to file a petition more than 30 days prior to submission to the Services. In fact, we encourage prospective petitioners to notify States earlier than 30 days before submission, to allow States more time to submit species information to the Services.

Comment (26): A commenter noted that Congress chose to provide States the same procedural rights that every other stakeholder is provided—an opportunity to provide their perspectives on positive 90-day findings and to submit any relevant information concerning the finding and species during the 12-month review process. They should not have an opportunity to comment on petitions before the Services have made their 90-day findings.

Our Response: We have revised our original proposed rule (80 FR 29286; May 21, 2015) such that we do not require petitioners to provide copies of their petitions to States before submission to the Services. However, we do note the special role envisioned for States under section 6 of the Act and find it is helpful for States to receive notifications of intent to file petitions on species found within their borders, to afford States the opportunity to provide information to the Services on those species, should they choose. If, in response to the required notification letter, any such State information is received before the 90-day finding is made, it may be useful in placing the information in the petition in context. Further, we encourage States to provide the Services with information they may have on species of concern at any time. Finally, during any subsequent status reviews, it is the practice of the Services to request additional information from all interested parties, including State wildlife agencies.

Comment (27): A commenter suggested adding a new paragraph in § 424.14(h)(2): "During the 12-month finding, the Service will fully include State biologists in evaluating the current status of the species proposed for listing. Status assessments will typically include: developing population and habitat models, identifying and evaluating threats, habitat requirements, and current species distributions. When possible, authorship of the Species Status Assessments will be shared between State and Service biologists to balance workload and promote data sharing."

Our Response: The scope of this regulation only includes how the Services will conduct 90-day petition findings, so it would not be appropriate to include the proposed language. However, to the extent practicable and appropriate, we will consult with and involve State agencies and other appropriate experts when conducting status reviews. The ability and need to do so will vary case-by-case, and depend on the expertise and resources available. However, the Act specifically charges the Services with the authority and obligation to implement the provisions of the Act; the Services are ultimately responsible for making determinations under the Act and cannot delegate that authority to other agencies.

The Services recognize the expertise and in-depth knowledge many State wildlife agencies have concerning species under their jurisdictions, value greatly our partnerships with State wildlife agencies, and take seriously the provisions of section 4 and 6 of the Act in coordinating and cooperating with the States. It is the practice of the Services to contact State wildlife agencies during status reviews to seek information on the subject species, and we invite States at any time to provide information and data they may have on species within the State. Many States provide frequent, regular updates to the Services on information about species that occur in their States.

Comment (28): Several commenters suggested adding Tribal entities to the originally proposed requirement for petitioners to send copies of petitions to State wildlife agencies, and incorporating any materials States send as part of the petition. They cited Secretarial Order 3206 and the Presidential Memorandum of 1994, which set forth the general conditions under which these consultative actions are to occur, and cited Executive Order 13175, which specifically provides guidance for coordination and collaboration on policies that have Tribal implications. Further, FWS' tribal policy supports early coordination with Tribes, and states that the "Service will consult with Native American governments on fish and wildlife resource matters of mutual interest and concern," and that the "goal is to keep Native American governments involved in such matters *from initiation* to completion of related Service activities" [emphasis added].

Our Response: The Services greatly value the conservation partnerships we have with Tribes, as reflected in the intra-governmental guidance documents cited, and appreciate the conservation efforts and programs many Tribes have established. While there are no specific notification requirements for petitioners regarding Tribes, we encourage prospective petitioners, should they find that the range of a species includes Tribal lands, to contact the appropriate Tribes to coordinate with them and obtain information which they may have, and include this information in their petition documents. Further, during any subsequent status reviews, the Services are committed to proactively coordinating with Tribes on any species of interest on Tribal lands and to incorporating information and data Tribes provide into our reviews of those species.

Comment (29): In response to our revised proposed rule (81 FR 23448; April 21, 2016), a commenter noted that the Services should expand the requirements to send a letter to States of intent to file a petition to also include other government entities. Many county-level governments have dedicated wildlife departments that manage and monitor species and that could provide additional data on species status and habitat requirements.

Our Response: It would be difficult for petitioners to determine all county-level or other level government agencies that may have information on a subject species, and contact all such entities. Therefore, it would be unrealistic to make this a requirement for a request to qualify as a petition. However, we do encourage petitioners to avail themselves of such potential information sources whenever they are aware of them.

Paragraph (c)—Single Species Petition Limitation

Comment (30): We received several comments expressing concerns about the single species per petition requirement. These included concerns that limiting a petition to a single species will lead to an increase in the Services' processing time, a decrease in the efficiency of the listing process, and a reduction in listing species under the Act.

Our Response: By having multiple well-organized and complete single-species petitions, we anticipate that in many cases we will be able to evaluate each petition much more efficiently and effectively compared to a multi-species petition. It has been our experience that the quality of the information varies from species to species in the multi-species petitions we have received. Multispecies petitions have often generalized or referenced information across species, which significantly complicates the evaluation process, because it is unclear which references apply to which species. Because the Act requires us to make a finding on each petitioned action and species individually, we have determined that the approach outlined in this final rule will greatly enhance efficiency and effectiveness for both the public and the Services. Further, we do not think it will take appreciably more time or effort for the petitioner to provide a series of well-organized and complete single-species petitions than it would to produce one well-organized and complete multi-species petition.

Comment (31): One commenter asserted that requiring separate petitions to list species, or one or more subspecies or distinct population segment (DPS) of the same species will result in an increase to the Services' workload. Another commenter noted that if a petitioner seeks an action on a subspecies or DPS, the petition must present substantial scientific or commercial information indicating that the action may be warranted for each specified subspecies or DPS. The petitioner cannot rely upon general information regarding the species to support petitioned actions related to particular subspecies or DPS.

Our Response: We agree with the comments regarding the petitioner's burden to provide specific information to support requested actions for all "species" included in the petition. We clarify in this final rule that a petition may address either a single species or any number and configuration of "species" as defined by the Act (including subspecies of fish or wildlife or subspecies or varieties of plants, and DPSs of vertebrate species) that consist of members of a single species. Please see a more detailed discussion of this issue in Summary of Changes to Previous Regulations at 50 CFR 424.14, *Requirements for Petitions—Paragraph (c),* below.

We encourage members of the public to write their petition so that it addresses the appropriate rank (species, subspecies, variety, or population segment), but we also recognize that it is sometimes difficult to clearly determine the appropriate rank with the available information. We do not expect members of the public who may not have the expertise in taxonomy or genetics to make independent determinations on conflicting taxonomic assessments that may be available in the scientific literature. Along a similar line, if there is information to suggest that a vertebrate species occurs in population segments that may be discrete and significant (per the DPS Policy), then the petitioner may request that we consider one or more of these population segments as DPSs. Such a petitioner should include information to allow the Services to determine whether a given population segment of a vertebrate species may qualify as a DPS (*i.e.,* whether it may be both discrete and significant to the taxon to which it belongs). Thus, when the appropriate rank for listing is not clear to a petitioner, it is reasonable for a petition to address multiple entities, potentially at various ranks, as long as they all refer to the same species. In any case, as noted above, the petitioner has the burden to demonstrate that any entity not already recognized as a "species" under the Act may qualify as such, and to provide specific information to demonstrate that listing may be warranted.

Comment (32): Commenters expressed the opinion that species sharing the same habitat types or facing the same threats, or having other commonalities in data should be allowed to be included in one petition for the sake of efficiency as to the preparation of petitions and review of petitions. Other commenters noted that, if the Services find the petition does not provide sufficient information for one species, the Services have the right to make a negative finding for that species.

Our Response: The Act requires us to make findings for each petitioned species individually. Therefore, multi-species petitions do not save the Services time, even for species within similar habitat or facing similar threats. Even if species are found within similar habitats or face similar threats, we must be able to demonstrate the relevance of general information to each individual species in order to support our finding. The petition needs to clearly link the information provided to particular species and claims made. The petition needs to make the case for each individual species. However, nothing would prevent petitioners from submitting a batch of separate but related petitions for species occurring in the same habitats or experiencing similar threats. While petitioners might prefer to prepare a request that addresses species in groups for their own convenience, we find that the purposes of the statute are directly furthered by requiring petitions to present information species-by-species, because this will promote clarity and facilitate making the determinations required under the Act.

Comment (33): Several commenters cited the 1994 Services' Interagency Policy for the Ecosystem Approach to the Endangered Species Act. In that document, the first stated policy of the Services is to "[g]roup listing decisions on a geographic, taxonomic, or ecosystem basis where possible." The commenters stated that the proposed rule does not acknowledge that these other ecosystem-based policies exist, or that there may be practical consequences stemming from these proposed changes.

Our Response: While in some instances it has proven to be efficient for the Services to adopt an ecosystem-based approach to listing several species in the same ecosystem facing the same threats, we have found through experience that applying this approach to petitions has proven impractical. As noted above, we must make individual findings on each species for which we receive a petition. Species-specific petitions facilitate the Services' ability to make the determinations for each species efficiently. However, if the Services find that multiple species warrant listing in a specific ecosystem, then we can propose a listing rule setting out determinations for each of several species in that common ecosystem. The Services have found great efficiencies in resources and time in grouping determinations into a single rule, and that approach comports with our 1994 policy.

Paragraph (c)—All Relevant Data Certification

Comment (34): We received many comments expressing concerns about the requirement for including all relevant data in petitions and certifying to that effect, as we originally proposed. The commenters raised various concerns regarding the practicality and legality of this provision.

Our Response: The Services appreciate the difficulty of determining whether all relevant information on a subject species has been gathered. Therefore, in our April 21, 2016 (81 FR 23448), revised proposed rule, we removed this requirement, and instead require petitioners to include a "detailed narrative justification for the recommended administrative action that contains an analysis of the information presented," and recommend that petitioners provide a "complete, balanced representation of the relevant facts, including information that may contradict claims in the petition." In availing themselves of the petition process, petitioners seek to direct the Services' focus and resources to particular species. They should be forthcoming as to the known, relevant facts so that the Services have an accurate basis from which to evaluate the merits of the petition while making efficient use of its focus and resources.

Comment (35): Several commenters expressed support for the provision requiring submitters to include all relevant data in petitions and to certify that they have done so, because it would provide supporting and refuting information and avoid limiting the Services to consideration of only biased information. Other commenters support the provision authorizing the Services to reject petitions if they do not meet the "all relevant data" requirement.

Our Response: We realize that it would be difficult to provide all relevant data, and difficult to assess (and certify) that all information concerning a species has been discovered; for example, not all species information is publicly available, and research for many species is ongoing. Therefore, we have revised this final rule so that we encourage petitioners to provide a complete, balanced presentation of facts, including those which may tend to refute or contradict claims in the petition. However, that is not part of the essential information that is required in all petitions. Rather, it is one of the factors that the Services will consider when making the 90-day finding on the petition. This change is to encourage prospective petitioners to include in the petition a complete, balanced presentation of facts for the Services to evaluate in the 90-day finding and, if the finding is substantial, to consider in a species status assessment, without establishing it as an essential requirement that could unduly burden petitioners.

We are revising the regulations to clearly communicate the essential information that is required in all petitions (§ 424.14(c)), and identified the specific information which will help the Services in reaching their finding (§ 424.14(d) and (§ 424.14(e)). The Services retain discretion to consider a request to be a petition and process a petition where the Services determine there has been substantial, but not full technical, compliance with the relevant requirements (see discussion under *Responses to Requests—Paragraph (f),* in Summary of Changes to Previous Regulations at 50 CFR 424.14, below).

Comment (36): A commenter noted that petitioners need to let the Services know what sources were consulted. If an obvious source is missing or used incorrectly, then the Services should be able to quickly and efficiently reject the petition.

Our Response: Under the revised regulations, requests for agency action must contain electronic or hard copies of supporting materials, or appropriate excerpts or quotations from those materials, to qualify as petitions. Therefore, the Services are not required to consider claims for which cited source materials are not included with the petition. The Services will review this information to ensure compliance with the provisions set forth in this rule, and will take into consideration the extent to which the source materials included with the petition support a complete, balanced presentation of the facts, in any 90-day findings on petitions.

Comment (37): A commenter stated that there is a lack of peer-reviewed science in petitions. Further, data in petitions should be reviewed by the affected States' wildlife agencies using local information, science, and observations to corroborate the findings before the data could be used in a petition.

Our Response: We encourage petitioners to conduct a review of the peer-reviewed literature on the species at issue as thoroughly as possible in order to ensure the petition is well-supported. While State review of petitions and their supporting information would be helpful, it would be impractical to require this during the time frame associated with our making 90-day findings. However, should the Services make a substantial 90-day finding, States and members of the public will have an opportunity to review and provide comments on source materials used in the petition at that time, as well as provide additional information.

Comment (38): A commenter stated that the removal of the proposed requirement that petitioners coordinate with States before submitting a petition also removes the element of cooperation that was being fostered through the original proposal. Anything the Services can do to foster increased dialogue between petitioners, other interest groups and State agencies engaged in wildlife conservation will ultimately be for the benefit of the species.

Our Response: By requiring the notification of States at least 30 days prior to submission of a petition, it is the Services' intention both to inform, and to foster the cooperation of, State partners while balancing the desire for State coordination with the required timeframes associated with petition findings and the rights of petitioners. This change provides a role for State agencies that the current regulations do not have. We agree that communication and collaboration between State agencies or other interested parties and the Services generally helps further the conservation of species. State agencies may send the Services any information relevant to a petition after they have been notified of a petition's pending submission. In order for the information to be available to be considered as context for the petition, it should be submitted in a timely fashion.

Paragraph (c)—Other Requirements

Comment (39): A commenter stated the requirement of proposed § 424.14(b)(6) (§ 424.14(c)(6) in this rule), concerning providing electronic or hard copies of supporting material) could become burdensome and quite expensive for petitioners. Additionally, the Services should clarify that the provisions of proposed § 424.14(b)(6) would cover only sources that the petitioners choose to rely on for their petitions. The commenter further suggested revising proposed § 424.14(b)(8) to: "For a petition to list a species, delist a species, or change the status of a listed species, information on the current geographic range of the species, including range States or countries, to the extent that petitioners have this information."

Our Response: Copies of source material cited in support of a petitioned action are key information needed by the Services to evaluate a petition efficiently and effectively. The Services are not required to search out source materials not provided in the petition to find justification for claims in the petition. Therefore, it is the petitioner's responsibility to provide justification for the claims in the detailed narrative; this responsibility includes providing the source material on which they base their claims. These sources may be provided in hard copy or in electronic form. Most petitioners opt to provide source materials electronically, which saves mailing and printing costs and provides an efficient way to include this essential part of a petition to the Services.

Further, a robust petition should provide a balanced presentation of facts, including those which may be contradictory. Including such information and source material demonstrates that the petitioner has diligently investigated the important issues addressed in their petition and not merely compiled an unrepresentative sample of information. Including contradictory information also gives the petitioner the opportunity to offer their analysis or explanation as to why that contradictory information is not conclusive.

Finally, the suggested language regarding requiring geographic range and range State information is already covered in this rule at § 424.14(c)(8), and would be redundant. This is important information to include in a petition, and we do not think it unreasonable to make this a requirement under § 424.14(c)(8).

Comment (40): A commenter stated that the Services should carefully consider the implications of requiring petitioners to include "electronic or hard copies of supporting materials (*e.g.*, publications, maps, reports, letters from authorities) cited in the petition." Petitioners often cite publications that are available only through paid databases that restrict the distribution and use of those publications through copyright law. Because publications appended to listing petitions are presumably accessible to the public (*e.g.*, through Freedom of Information Act (FOIA; 5 U.S.C. 552) requests), there may be conflicts between the supporting materials requirement and the legal restrictions under which petitioners obtain certain publications.

Our Response: We have clarified in section (c)(6) of the final regulations that petitioners may provide either full copies of supporting materials or appropriate excerpts or quotations that support the assertions in the petition. Where a petitioner believes a source material to be protected by copyright laws, they should consider including limited excerpts or quotations from such material that they believe support their statements. This will fulfill the petitioners' obligation to present information to support the statements in the petition, without creating potential conflicts with copyright protections. Where materials are subject to copyright protection, the Services may not be able to obtain such materials.

Comment (41): A commenter stated forcing petitioners to append information from the States interferes with a petitioner's rights under the APA because it no longer allows for a balanced presentation of information to the Federal Government.

Our Response: Based on public comments on our May 21, 2015, proposed rule (80 FR 29286), we published a revised proposed rule (81 FR 23448; April 21, 2016) removing the requirement that petitioners must include information from States in their petitions. As a result, in this final rule, we clarify that petitioners should include information from various sources in support of their requests, and we require that copies of the cited source information be included with submitted requests, in order for the Services to be able to evaluate the claims in the petition. In determining whether the petition presents substantial information, the Services are not required to consider claims for which supporting materials are not included with the petition. In the past, we have found that that information in petitions can be incomplete, misrepresented, or one-sided. As a result, we have revised these regulations to encourage petitioners to provide a complete, balanced presentation of facts, including any information the petitioner is aware of that contradicts claims in the petition.

Comment (42): A commenter noted that petitioners occasionally reference unpublished data. The proposed rules contain no criteria for use of and access to these data. We recommend the Services specify that such material is subject to the same requirements.

Our Response: We agree that copies of all information used to support a petitioned action should be provided with the petition for the Services to consider and evaluate.

Paragraph (d)—Types of Information To Be Included in Petitions To List, Delist, or Change the Status of a Listed Species

Comment (43): Some comments related to our definitions and usage of the terms "substantial information" and "substantial scientific and commercial information." These comments included a suggestion to define the relevant terms in the first paragraph in which they appear and to be consistent in the use of the terminology throughout the rule.

Our Response: We appreciate the comments. We have revised the text of this rule to reflect the specific language of the Act setting out the standard that applies to each type of petition. The standard that applies to petitions to list, delist, or reclassify a species is that the petition must present "substantial scientific or commercial information" indicating that the petitioned action may be warranted (§ 4(b)(3)(A)), whereas a petition to revise a critical habitat designation must present "substantial scientific information" (§ 4(b)(3)(D)(i)). Note that the statute does use the term "substantial information" in § 4(b)(3)(B) and and 4(b)(3)(D)(ii). In the final rule, we continue to define the relevant terms directly in the respective subsections setting out how we make findings on each type of petition. For example, our explanation of what we consider to be substantial scientific or commercial information appears in final § 424.14(h)(1)(i), because paragraph (h) explains the standards we use in making findings on petitions to list species, delist listed species, or reclassify listed species, and is therefore the most logical place for that explanation, even though the term is first used in § 424.14(d) (which alludes to the standard that the Secretary must apply but primarily is setting out recommended content items).

Comment (44): A commenter suggested changing proposed § 424.14(c)(3) (§ 424.14(d)(3) in this rule), concerning inclusion of magnitude and imminence of threats in the petition) by omitting the final clause and replacing it with: ". . . including, where available, a description of the magnitude and imminence of the threats."

Our Response: The change the commenter is requesting is the addition of the condition "where available" with respect to including a description of the magnitude and imminence of threats to a species. Please note that the elements of § 424.14(d) in this rule are not absolute requirements to qualify as a petition, but the Services' findings will depend, in part, on the degree to which the petition includes this type of information. The magnitude and imminence of threats are generally key determinants of whether a species may or may not warrant protection under the Act. Thus, although we would not reject a petition for not including information on magnitude and imminence of threats, our evaluation of whether the petition presents substantial information indicating that the petitioned action may be warranted would need to take into consideration the presence, the imminence, and the severity of threats. Therefore, we think it advisable to include in petitions information regarding the threat severity (magnitude) and the timing of those threats (currently occurring, imminent, in the foreseeable future, etc.).

Paragraph (e)—Information to Be Included in Petitions to Revise Critical Habitat

Comment (45): Several commenters noted that the requirement of proposed § 424.14(d)(6) for "a complete presentation of the relevant facts, including an explanation of what sources of information the petitioner consulted in drafting the petition, as well as any relevant information known to the petitioner not included in the petition," would be duplicative and indiscernible from the requirements of proposed § 424.14(b) (§ 424.14(c) in this rule), and recommended proposed § 424.14 (d)(6) not be adopted. Another commenter asked how "a complete presentation of the relevant facts" differs from a "detailed justification for the recommended administrative action that contains an analysis of the information presented."

Our Response: Based on comments received on the original proposal, we revised our proposal to address these issues. Recognizing that it could be an undue burden to require petitioners to include all relevant information that is reasonably available, and certify to that effect, in this rule we have removed the certification requirement from the § 424.14(c) list of essential requirements for all petitions. Section 424.14(c) retains the more-general essential requirement that all petitions include a detailed narrative justification for the recommended administrative action that contains an analysis of the information presented. The Services will reject petitions that do not meet this detailed-narrative requirement, but petitioners could still resubmit their petition after adding a detailed narrative in accordance with § 424.14(c). In this rule, paragraphs (d) and (e) of § 424.14(d) and (e), on the other hand, do not prescribe essential requirements for all petitions, and instead identify factors that the Services will consider in making 90-day findings. One of these factors, set forth at § 424.14(d)(5) and § 424.14(e)(6), is the degree to which the petition includes "[a] complete, balanced representation of the relevant facts, including information that may contradict claims in the petition." A request will not be rejected as a petition for failing to meet § 424.14(d)(5) or § 424.14(e)(6). It may be difficult for a non-scientist to locate and present all of the relevant facts completely, and, although the Services encourage petitioners to provide a balanced presentation of facts, there may not always be information contradicting claims made in the petition. As a result, the Services will consider this information, along with readily available information we may consult for context on the species and the requested action, when determining if the petition presents substantial information indicating that the petitioned action may be warranted.

Comment (46): Many commenters noted the language of proposed § 424.14(d)(5) (§ 424.14(e)(5) in this rule) was inconsistent with the previous regulations at 50 CFR 424.12 in that the proposed petition regulations do not reference a "determination" that occupied areas are not enough for conservation of a species before moving on to consideration of unoccupied areas (*e.g.*, limiting the designation of critical habitat to the species' current range would be inadequate to conserve the species).

Our Response: This rule is consistent with the revised 50 CFR 424.12 regulations that became effective on March 14, 2016 (81 FR 7414; February 11, 2016). The current 50 CFR 424.12(b) states "Where designation of critical habitat is prudent and determinable, the Secretary will identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat." The Services are no longer required to consider whether a designation limited to the occupied areas would be sufficient before considering unoccupied areas. Therefore, no additional language is needed in the provision of § 424.14(e)(5) of this rule.

Comment (47): A commenter stated that the requirement to describe the physical or biological features (PBFs) provides little value because the Services have already described them in the final critical habitat rule for the species.

Our Response: In requests to revise critical habitat in occupied areas, it is essential to provide information on whether the PBFs are present or absent in those areas (see § 424.14(e)(4): "For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features. . . ."). In some cases, petitioners may believe that we have misidentified or not included all PBFs, and that recognizing a different set of PBFs would lead to additional areas of occupied habitat qualifying for inclusion in a designation, or certain areas of the existing designation no longer qualifying. Similarly, PBFs may have moved (no longer present in one area, but more recently developed in others), or there may be newer information on a species' needs and, consequently, PBFs may change, PBFs previously identified may no longer be essential to the conservation of the species, or new PBFs may be identified. Therefore, the Services will consider petitions seeking to modify the description of PBFs in an original designation where recognizing a different set of PBFs would result in changes to the areas of occupied habitat that would qualify for inclusion. PBFs are analyzed in the course of developing designations, but it is the specific areas as shown on a map that are designated. Quite often scientific understanding of essential features advances after a designation is made, and the Services must consider the best available information when conducting section 7 consultations, not just what was described at the time of designation. Thus, even without a rule revising a critical habitat designation, the Services will always consider the best available, current information about the essential PBFs and what makes them essential in the course of section 7 consultations. Petitions seeking to "revise" a list of features, with no consequential changes to areas of occupied habitat that are included in a designation, are thus both unnecessary and ineffective.

Comment (48): A commenter suggested specific wording revisions to proposed § 424.14(d)(5) (§ 424.14(e)(5) in this rule): "For any areas petitioned to be added to critical habitat that were outside the geographical area occupied by the species at the time it was listed, information explaining: (1) Why the species' present range is inadequate to ensure its conservation; (2) why the petitioned area presently contains features essential to the conservation of the species; and (3) how the designation will impact, economically and otherwise, the use of the petitioned area for other purposes. For any areas petitioned to be removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are no longer essential to the conservation of the species."

Our Response: We appreciate the commenter's concern that unoccupied habitat not be added to an existing critical habitat designation without good reason, but choose to retain the proposed language at § 424.14(e)(5): "For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species.'' There are several reasons for this:

- In light of recent revisions to 50 CFR 424.12, the Services are not required to first consider whether a designation limited to present range is adequate to ensure conservation.
- This provision needs to address requests to add as well as remove unoccupied areas from a critical habitat designation.
- The language is consistent with the definition of critical habitat in the Act (16 U.S.C. 1532(5)(A)(ii)), which includes unoccupied areas, that is, ''specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Unlike the geographical areas occupied by the species at the time it is listed, unoccupied areas need not include the essential PBFs (see 16 U.S.C. 1532(5)(A)(i) of the Act). Therefore, it would be inconsistent with the Act to require such information in requests to revise unoccupied critical habitat.
- A determination as to whether unoccupied areas are essential for the conservation of the species is made by the Services, not the petitioner. However, it may be helpful if the petitioners include information indicating why the petitioned areas are or are not essential for the conservation of the species.

Paragraph (f)—Response to Requests

Comment (49): A commenter stated the Services should accept petitions that make a good faith effort to comply with provisions of the regulations and not reject for minor procedural flaws. The Services should include a ''cure'' provision in which the Services alert the petitioner to flaws in the petition and the steps that must be taken to remedy them and allow a specified amount of time for the petitioner to fix the flaws. Unless petitioners are supplied with constructive feedback, this will greatly hamper the petition process.

Our Response: In this rule at § 424.14(f), the Services retain discretion to treat as a petition a request that the Services determine substantially complies with the relevant requirements. Therefore, it is unlikely that a request will be rejected for minor omissions. However, if the Services determine that the request does not meet the requirements set forth at § 424.14(c), they will, as noted at paragraph § 424.14(f)(1), within a reasonable timeframe, notify the sender and provide an explanation of the rejection. The petitioner will then be able to correct the request and resubmit to the Services at their convenience.

Comment (50): Some commenters asked whether petitioners would be notified when a request is determined not to constitute a petition and given the reasons for such determination. As drafted, the proposed rule does not indicate the Services will notify petitioners of a compliant petition.

Our Response: As noted above, submissions that do not qualify as petitions will be returned to the sender, along with a form letter or checklist describing what components are missing. However, for expediency, we will generally not notify petitioners of acceptance of petitions in a separate communication; in most cases, publication of the Services' 90-day findings will serve as such notifications.

Comment (51): A commenter supported the deletion of the phrase ''in the agency's possession'' as it relates to information the Services may consider when analyzing a petition. In the past, the ''in the agency's possession'' requirement has been interpreted as the inability of the Services to even do a simple Internet search for helpful information after a petition has been received. The Services should not be limited to the use of information they have in their possession at the time they receive a petition. Such a limitation could lead to a ''substantial'' 90-day finding, not because a species may be at risk, but simply because the petition presents a skewed or impartial view of the facts.

Our Response: We agree. The phrase ''in the agency's possession'' was interpreted by some as meaning hard (paper) copies of information materials stored in agency office files at a physical location. Most information and data are now accessed and stored electronically. Therefore, it is appropriate for the Services to place petitions in context by consulting readily available information, such as information that is stored electronically in databases routinely consulted by the Services in the ordinary course of their work. For example, it would be appropriate to consult online databases such as the Integrated Taxonomic Information System (*http://www.itis.gov*), a database of scientifically credible taxonomic nomenclature information maintained in part by the Services. This rule allows the Services to use readily available information to provide context for the claims in the petition, even should it be received after the time the petition is filed, up to the time we make the finding. Please see *Findings on a Petition to List, Delist, or Reclassify—Paragraph (h)* under Summary of Changes to Previous Regulations at 50 CFR 424.14, below, for further discussion.

Paragraph (h)—Findings on Petitions To List, Delist, or Reclassify

Comment (52): Several commenters expressed concerns about the information standard we use in evaluating petitioned requests. Some specifically noted the addition of the term ''credible'' in definition of the substantial scientific or commercial information standard in proposed § 424.14(g) (§ 424.14(h) in this rule). One commenter expressed concern that the Services would define credible as precluding certain categories of information or data, such as traditional ecological knowledge or gray literature that may not be published or available in traditional scientific journals. Conversely, another commenter noted that the Services should only consider peer-reviewed literature provided in a petition to be credible, sound science.

Our Response: Section 4(b)(3)(A) of the Act directs the Services to make a finding as to whether a petition presents ''substantial scientific or commercial information indicating that the petitioned action may be warranted.'' This is the threshold required of the information provided in a petition, and is the standard we use at § 424.14(h) in this rule. The Act notably does not require that the Services make 90-day findings on the basis of the ''best scientific and commercial data available.'' Nevertheless, we are cognizant that positive ''substantial information'' findings require that the Services devote additional time and resources towards completing status assessments for those species, as well as 12-month findings. Therefore, we have concluded that it would be more efficient and would better advance the purposes of the Act to clarify for petitioners that—for a petition to indicate that the petitioned action may be warranted, and thereby merit this additional expenditure of the Services' resources—the information provided in the petition must, at a minimum, be credible. ''Credible scientific or commercial information'' may include all types of data, such as peer-reviewed literature, gray literature, traditional ecological knowledge, etc.

Comment (53): A commenter stated that the Secretaries still appear to have broad discretion in establishing the definition of ''reasonable person.'' The commenter asserts that the definition leaves open the very type of arbitrary or capricious litigation the Service is attempting to resolve by citing the reasoning in the Congressional Conference Report. The courts typically defer to the agencies' interpretation of scientific information. Therefore, petitioners are left without remedy when placed in disagreement with the Secretary's conclusion.

Our Response: The Act requires the Services to consider whether a petition presents substantial information to demonstrate that the requested action may be warranted, but does not define "substantial information." The Services therefore have discretion to adopt a reasonable interpretation of this foundational standard that furthers the statutory purposes and reflects the scientific context in which the Service makes decisions.

In the interest of providing greater clarity and transparency to the public, we have promulgated this rule to clarify and more thoroughly explain what is required in a petition and how the Services make their findings. We thus explain that the "substantial scientific or commercial information" standard (which applies to listing, delisting, and reclassification petitions) refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. (We similarly interpret the "substantial scientific information" standard that applies to petitions seeking critical habitat revisions.) This interpretation clarifies that the Services must evaluate petitions in their capacity as biologists with the scientific expertise to investigate whether a species may be imperiled. As such, the Services analyze and decide whether petitions present "substantial information" consistent with the analyses and decisions that a hypothetical reasonable biologist would make. In addition, this hypothetical reasonable scientist would need to be impartial and approach the question as he or she would any scientific inquiry. Finally, the hypothetical person evaluating the information in the petition would need to perceive that the information is credible; conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered "substantial information." These concepts are in no way new to the Services' practice; this is how we have and must evaluate petitions. Further, we believe this clarification aligns with the House Conference report, which states that, when courts review such a decision, the "object of [the judicial] review is to determine whether the Secretary's action was arbitrary or capricious *in light of the scientific and commercial information available* concerning the petitioned action." (H.R. Conf. Rep. No. 97–835, at 20 (1982), reprinted in 1982 U.S.C.C.A.N. 2860, 2862) [emphasis added]. Finally, a "reasonable person" standard is commonly used in legal contexts.

If a person disagrees with a Service's finding, in the case of 90-day petition findings in which the Service finds there is substantial information indicating that the petitioned action may be warranted (in other words, not a final agency action), that person could provide additional information regarding the species to help inform future agency actions such as the subsequent 12-month finding. In the case of not-substantial 90-day findings (which are final agency actions), one remedy would be to submit a new petition with further justification and rationale for the requested action. Also, final agency actions are judicially reviewable.

Comment (54): Proposed § 424.14(g)(1)(i) (§ 424.14(h)(1)(i) in this rule) expands on the "substantial scientific or commercial information" standard of the Act. Under the existing petitions regulation, "substantial scientific or commercial information" means "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Now, the Services add to this "a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted." Normally, reasonable people do not, in the course of their daily lives, conduct impartial scientific reviews.

Our Response: Section 424.14(h)(1)(i) clarifies and expands on the substantial-information standard by defining it as credible scientific and commercial information that would lead a reasonable person conducting an impartial scientific review to conclude that the action proposed in the petition may be warranted. (We similarly define the "substantial scientific information" standard that applies to petitions seeking revisions to critical habitat at 424.12(i)(1)(i).) As discussed in response to Comment 53, the Services have the discretion and a need to adopt a reasonable interpretation of this key standard, which is not defined in the statute. We have included the term "credible," because—for a petition to indicate that the standard for the petitioned action may have been met, and thereby merit the additional expenditure of the Services' resources—the information provided in the petition must, at a minimum, be credible. In other words, the Services must evaluate whether the information in the petition is substantiated and not mere speculation or opinion. Only those claims or conclusions drawn in the petition with the support of credible scientific or commercial information should be considered "substantial information."

The addition of "conducting an impartial scientific review" to the reasonable person standard for what constitutes "substantial scientific and commercial information" similarly clarifies to petitioners the context against which the Services will necessarily evaluate petitions. The Services must evaluate petitions on the basis of the scientific validity of the request; that is, impartially evaluate whether there is a scientific basis for the requested action, and not just unsubstantiated claims. Because the context for this action involves evaluating scientific information, it is appropriate and necessary to take as our reference a person conducting an impartial scientific review. There is nothing in the Act to suggest that 90-day findings should be evaluated based on what persons lacking scientific background would conclude, and to adopt a generic standard would not further the purposes of the Act or reflect how the Services must and do actually go about evaluating petitions.

Comment (55): Several commenters raised questions regarding the Services' treatment of a subsequent petition, including the definitions and interpretations of the terms "considered" and "sufficient"; how our determination would relate to other reviews, such as 5-year reviews; and how new information or new analyses, such as models, would be evaluated.

Our Response: In this rule, § 424.14(h)(1)(iii) addresses situations in which the Services have already made a finding on or conducted a review of the listing status of a species, and, after such finding or review, receive a petition seeking to list, delist, or reclassify that species. The provisions at § 424.14(h)(1)(iii) do not state or imply that such petitions will be rejected outright; indeed, as noted below, we will consider all requests that meet the requirements of § 424.14(c) to be petitions, and we will evaluate all petitions and make findings on them. Instead, we include this provision to provide prospective petitioners greater predictability and clarity, by making clear that we must evaluate such petitions in light of the previous findings or determinations. Thus, if no new information or analysis is provided in such a petition, the outcome will likely (but not always) be a not-substantial 90-day finding.

To clarify some of the terms we used, by using the term "considered" in the phrase "new information not previously considered," we mean that information or analysis was evaluated in a previous finding, status review, or listing determination. "Sufficient" new information is that information or analysis which would lead a reasonable person conducting an impartial scientific review to conclude that the action proposed in the petition may be warranted, despite the previous review or finding.

With respect to prior listing determinations, the prospective petitioner may review the final listing rule and any supporting documentation to see what information was considered and evaluated. Five-year status reviews are not published in the **Federal Register** but are posted on the Services' Web sites. FWS status reviews and **Federal Register** documents are posted on the species profile pages maintained in FWS' Environmental Conservation Online System (ECOS). Species profiles may be accessed by searching on the species name at *http://www.ecos.fws.gov/ecp.* NMFS' documents can be found at *http://www.nmfs.noaa.gov.* In conducting status reviews, the Services may reevaluate data they already considered in previous status reviews. Petitioners may similarly present a new analysis of existing data in support of their requests, and the Services will evaluate such requests on that basis. A petitioned request could be based on discovery of an error in research regarding information previously considered by the Services.

Unless such a petition provides different data, or a different analysis or interpretation of, or errors discovered in, the data, model or analytic methodology used in a previous finding, review, or determination, the conclusions may be the same, and the Services may find that such a petition does not provide substantial information indicating that the petitioned action may be warranted.

We make the distinction that, in the case of prior reviews that led to final agency actions (such as final listings, 12-month not-warranted findings, and 90-day not-substantial findings), a petition would generally be presumed not to provide substantial information unless the petition provides new information or a new analysis not previously considered in the final agency action. On the other hand, if the previous status review did not result in a final agency action, the petition would not be required to overcome the presumption that, unless it includes information or analysis that was not considered in the previous status review, it generally will not present substantial information indicating that the petitioned action may be warranted.

Comment (56): One commenter stated that the "new information" requirement in the revised proposed rule (81 FR 23448; April 21, 2016) could severely limit the ability to file delisting petitions that assert flaws in the Services' prior consideration of information. Petitioners should be able to assert that information the Services previously considered was misused, misrepresented, or misinterpreted, or that the original data for the species' classification were in error as the basis for delisting.

Our Response: This rule will not limit the ability to file delisting or other petitions. In cases where petitioners request an outcome that differs from the outcome reached in a previous Service finding or determination, the rule simply recognizes that the courts apply a presumption that agency actions are valid and reasonable, and therefore the petitioner should provide new or additional information or a new analysis not previously considered. We add this requirement to prevent the petition process from being used inefficiently—in effect, to voice disagreement with a previous determination by one of the Services without providing any new information or analysis relevant to the question at issue, and instead of using the appropriate judicial forum to challenge the previous determination directly. An appropriate showing may include an explanation of how information used in the previous analysis was misused, misrepresented, or misinterpreted. Also, this rule does not prevent a petitioner from requesting a delisting of a listed entity based on error in classification of that listed entity.

Paragraph (h)—Use of Information in Agency Files

Comment (57): Several commenters support the agencies' use of additional information as described in the proposed rule, as long as it is clear that such information is readily available and does not serve as a justification for the Service to actively supplement the petition or initiate new data collection processes, contracts or research as part of the 90-day finding process.

Our Response: The Services recognize that the statute places the obligation squarely on the petitioner to present the requisite level of information to meet the "substantial information" test; therefore, the Services should not seek to supplement petitions. However, in determining whether the petition presents substantial scientific or commercial information, it may be appropriate to consider readily available information to provide context to the information the petition presents. It is not the intent of the Services to initiate any data collection or research methods, nor is there time for the Services to conduct such methods in the 90-day petition finding process.

Comment (58): A commenter stated that, to the extent that the Service intends to review and rely upon readily available information, there first must be a public notice and availability of such information for review and comment by the public. Otherwise, the public would not be made aware of such information and afforded the ability to comment on the accuracy, sufficiency and relevance of such information.

Our Response: The statute does not provide for a public comment process at the 90-day stage of review of petitions. The Services provide public notice and request information when publishing a positive 90-day finding and initiating a 12-month status review in response to a petition, but it is neither appropriate nor feasible to do this prior to making a 90-day finding due to statutory time constraints. Although the Services may consider readily available information to provide context in which to evaluate the information presented in a petition, the 90-day petition finding is based on the information provided in the petition. A 90-day finding is an initial assessment of information provided in the petition and, when appropriate, information readily available to the Services. When our 90-day findings are published in the **Federal Register**, the petition and supporting information, and any other information we may have relied upon for our finding, is posted online and made available to the public. If we find the petition presents substantial information that the action may be warranted, we announce the initiation of a status review and request information from the public, which may include feedback on the accuracy, sufficiency, and relevance of any information considered in making the finding. For petitions that are found to be not substantial, we publish the finding and make available the petition and any supporting information considered for the finding. The public is invited to submit information on any species at any time, which may include evaluation of information considered for any finding.

Comment (59): A commenter raised a question regarding proposed § 424.14(g)(1)(ii) (§ 424.14(h)(1)(ii) in this rule), asking how can the Services state that "the intent is not to solicit new information," when the proposed regulations at § 424.14(b)(10) would require the petitioner to gather "all relevant information" about a species, as well as information from every State where a species could possibly be found.

Our Response: In this final rule, we have removed the proposed requirements to which the commenter refers (*i.e.*, that petitioners pre-coordinate with States and certify that they have provided all relevant data). In this rule, § 424.14(h)(1)(ii) describes the type of readily available additional information the Services may consider to place a petition in context when making their findings. Section 424.14(h)(1)(ii) states that, in reaching the initial finding on the petition, the Services will consider information submitted by the petitioner and may also consider information readily available at the time the determination is made. This provides a balanced approach that will ensure that the Services may take into account the information available to us to provide context for assessing the petition, without opening the door to the type of wide-ranging information request more appropriate for a status review. The intent of this approach is for the Services to be able to use readily available information to provide context in which to evaluate the information presented in the petition, not for the Services to solicit new information on which to make a finding.

Comment on National Environmental Policy Act

Comment (60): A commenter stated that the Services must prepare an environmental impact statement (EIS) for the proposed rule because the net effect of the changes to the existing regulations will be fewer species being protected under the Act, more extinctions, and consequently more ecosystems upon which endangered species depend being degraded and lost.

Our Response: We do not anticipate that the changes to the regulation set forth in this rule will result in fewer species being listed. By providing clearer requirements and expectations to prospective petitioners, the quality and completeness of petitions will likely improve, leading to more accurate 90-day findings and consequently more efficient use of limited resources.

As discussed in greater detail in the National Environmental Policy Act Determination section below and in the Environmental Action Statement (available at *http://www.regulations.gov*, under Docket Nos. FWS–HQ–ES–2015–0016 and DOC 150506429–5429–01), we have concluded that this final rule revising the regulations at 50 CFR 424.14 falls within categorical exclusions from NEPA under both applicable DOI regulations and NOAA guidance. Specifically, the regulation falls within the DOI categorical exclusion for "[p]olicies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature." 43 CFR 46.210(i). It also falls within the substantially identical NOAA categorical exclusion for "policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." *See* NOAA Administrative Orders (NAOs) 216–6A (section 6.01) and 216–6 (section 6.03c.3(i)).

We do not anticipate that this final rule will change the outcomes of the Services' 90-day findings as to whether petitions present substantial information indicating that the petitioned actions may be warranted, because it is administrative and procedural in nature, and is designed merely to clarify and streamline the petition process consistent with statutory language, legislative history, and case law. Moreover, the revised regulations do not limit Secretarial discretion, because they do not mandate particular outcomes in future decisions regarding whether a request should be accepted as a petition or whether a petition presents substantial information that a petitioned action may be warranted.

Although the revised regulations expand on what information must be included in a request for it to qualify as a petition under section 4(b)(3) of the Act, they also provide for a process to inform petitioners when the request fails to meet the required criteria and allow discretion for the Services to consider a request that substantially complies with the required elements even if there is not full technical compliance. The Services will, within a reasonable timeframe, notify the petitioners of the required information that is missing. This will allow the submitters to cure any deficiencies before resubmitting the petition to the Services, should they choose to do so. Therefore, we do not expect that this additional procedural requirement will affect the substantive outcomes of 90-day findings on well supported petitions; rather, it will make the Services' consideration of petitions more efficient.

Summary of Changes to Previous Regulations at 50 CFR 424.14

General

Throughout the regulation text we replace the title "the Secretary" or "the Secretaries" with "the Services," as the Services are the formal designees of the Secretaries of Commerce and the Interior who have the delegated authority to implement the Act.

We also change the overall organization of the regulations. Instead of organizing all aspects of the regulations into the two categories of petitions under the Act (petitions to list, delist, or reclassify a species are discussed in current paragraph (b), and petitions to revise critical habitat are discussed in current paragraph (c)), the new regulations are organized by function. Requirements that apply to all petitions under the Act appear first (in new paragraphs (a), (b), (c)), followed by the list of factors the Services will consider in making findings on the two categories of petitions, respectively, (in new paragraphs (d) and (e)). Similarly, procedures that apply to all petitions under the Act are set out first (in new paragraphs (f) and (g) (and also (k)), followed by procedures that apply to the different categories of petitions (in new paragraphs (h) and (i) (and also at (j), which provides procedures for APA petitions)). We move some of the specific provisions from the previous regulations accordingly to fit better into this overall structure.

Ability To Petition—Paragraph (a)

Section 424.14(a) retains the substance of the first sentence of the current section, stating that any interested person may submit a written petition to the Services requesting that one of the actions described in § 424.10 be taken for a species.

Notification of Intent To File Petition—Paragraph (b)

In our April 21, 2016, revised proposed rule (81 FR 23448), we included in § 424.14(b)(9) the requirement that, at least 30 days prior to filing a petition, the petitioners provide State agencies responsible for the management and conservation of wildlife with notice, by letter or electronic mail, of their intent to file a petition with the Services, and that copies of these letters or communications be included with the petition when it is submitted to the Services. In finalizing this rule, we realized that the requirement to provide notice to State agencies did not belong with the rest of paragraph (b), because that paragraph outlined a list of information to be included with a petition submission, not actions required of a petitioner before filing. Therefore, for clarity and consistency, we have reformatted the regulation by adding a new paragraph (b) requiring that petitioners notify States before filing petitions. The list of required information that was formerly contained in paragraph (b) has now been redesignated as paragraph (c). All subsequent paragraphs have been appropriately redesignated.

Therefore, new § 424.14(b) requires that for a petition to list, delist, or reclassify a species, or for petitions to revise critical habitat, petitioners must provide notice to the State agency or agencies primarily responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs. Petitioners must notify the State agency of their intent to file a petition, with either Service, at least 30 days prior to petition submission. If the State agency has data or information on the subject species that it would like to share with the Services, the agency may submit the data and information directly to FWS or NMFS. This provision will allow the Services to benefit from the States' considerable experience and information on the species within their boundaries, because the States would have an opportunity to submit to the Service any information they have on the species early in the petition process. The Services, in formulating an initial finding, may use their discretion to consider any information provided by the States (as well as other readily available information, including any information they have received from other interested parties before the initial finding) as part of the context in which they evaluate the information contained in the petition.

Also in § 424.14(b), we added the following sentence for clarification to the language of the revised proposed rule (81 FR 23448; April 21, 2016): "This notification requirement shall not apply to any petition submitted pertaining to a species that does not occur within the United States." This addition is to clarify that this provision does not apply to foreign species that do not occur in the United States, and further that, consistent with the definition in the Act at 16 U.S.C. 1532(17), "States" refers only to the States, the District of Columbia, and the territories and commonwealths of the United States.

Requirements for Petitions—Paragraph (c)

As stated earlier, new § 424.14(c) incorporates the substance of the revised proposal's (81 FR 23448; April 21, 2016) § 424.14(b), setting forth a number of minimum content requirements for a request for agency action to qualify as a petition for the purposes of section 4(b)(3) of the Act, 16 U.S.C. 1533(b)(3). These include some of the minimum requirements from the second and third sentences of current paragraph (a). As with § 424.14(b) in the revised proposal, new § 424.14(c) also expands upon the list of requirements for a petition, drawing in part from the provisions in current paragraph (b)(2).

New § 424.14(c)(2) requires that a petition address only one species. However, we revised the language from this statement in the revised proposal (81 FR 23448; April 21, 2016) to clarify that a petition addressing only one species could include any configuration of members of that single species as defined by the Act (the full species, one or more subspecies or varieties, and, for vertebrate species, one or more distinct population segments (DPSs)). The taxonomic (biological) classification system is hierarchical, which means a taxon of the rank of species also includes all subspecies or varieties, if any, under that species. Similarly, applying the concept of hierarchical entities to the Act's use of the term "species," a vertebrate species would also include any potential DPSs. Therefore, a single-species petition may address (a) one species of fish, wildlife, or plant; (b) one or more subspecies (variety) of fish, wildlife, or plant; or (c) one or more population segments of any vertebrate species (which FWS or NMFS will evaluate per the Services' Policy Regarding the Recognition of District Vertebrate Population Segments (61 FR 4722; February 7, 1996) (DPS Policy) as to whether it qualifies as a DPS). As such, the petitioner need not file separate petitions to address different hierarchical configurations of the same species.

Although the Services in the past have accepted multi-species petitions, in practice it has often proven to be difficult to know which supporting materials apply to which species. That has at times made it difficult to follow the logic of the petition. Because petitioners can submit multiple petitions, this requirement does not place any limitation on the ability of an interested party to petition for section 4 actions, but does ensure that petitioners organize the information in a way (on a species-by-species basis) that is necessary to inform the species-specific determinations required by the Act and will allow more efficient action by the Services.

The first six requirements (§ 424.14(c)(1) through (c)(6)) apply to each type of petition recognized under section 4(b)(3) of the Act. The first four requirements (§ 424.14(c)(1) through (c)(4)) were all contained in the previous regulations at § 424.14(a) and (b). The fifth and sixth requirements (§ 424.14(c)(5) and (c)(6)) clarify and expand on the previous provisions at § 424.14(b)(2)(iv) regarding a petition's supporting documentation.

At § 424.14(c)(5), we use the word "readily" before "locate the information cited in the petition, including page numbers or chapters as applicable." The Services should not have to search through reference material to locate specific information; the petition should provide clear, specific citations that allow the supporting information to be located readily.

The seventh requirement (§ 424.14(c)(7)) applies only to petitions to list, delist, or reclassify a species from an endangered species to a threatened species (i.e, downlisting) or from a threatened species to an endangered species (*i.e.,* uplisting), and requires that information be presented to demonstrate that the subject entity is or may be a "species" as defined in the Act (which includes a species, a subspecies or variety, or a distinct population segment of a vertebrate species that FWS or NMFS may determine to be a DPS). We note that currently-listed species are generally recognized by the Services as species under the Act; therefore, petitions regarding already-listed species need only refer to that species, except when the petition seeks a change in the delineation of a "species" under the Act (for example, to divide a species into more than one species, delist or reclassify a portion of a listed species, a change in how FWS or NMFS delineates a DPS, or otherwise reconfigure the current listing). Section 4(b)(3)(A) of the Act applies only to "a petition . . . to add a *species* to, or to remove a *species* from, either of the lists [of endangered or threatened wildlife and plants]" [emphasis added]. This provision screens from needless consideration those requests that clearly do not involve a species, subspecies, or distinct population segment of a vertebrate species.

The eighth requirement (§ 424.14(c)(8)), applies only to petitions to list a species, and to petitions to delist or reclassify a species in cases where the species' range has changed since listing, and requires that information be included in the petition describing the current and historical range of the species, including range States or countries, as appropriate. It is important that the Services have information on both the current and historical range of the species; for example, a historical range that is significantly larger than the current range would show range contraction, which may be an important consideration. The previous regulations at § 424.14(b)(2)(ii) identified as one of the factors the Services will consider in evaluating listing, delisting, and reclassification petitions the degree to which the petition contains a detailed narrative describing "past and present . . . distribution of the species. . . ." New § 424.14(c)(8) now expands on this requirement and includes it as one of the essential requirements for a petition.

The ninth requirement, § 424.14(c)(9) relates to the requirement of § 424.14(b) that petitioners must provide notice to the State agency responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs, at least 30 days prior to petition submission. Copies of the letter or electronic communication from the petitioner notifying the State agency of the petitioner's intent to file a petition with either Service must be included with the petition when it is submitted; such copies are considered a required part of the petition.

Please note that any decision to provide the protections of the Act to a species in an expedited manner under the Act's section 4(b)(7) (*i.e.*, emergency listing) is at the discretion and determination of the Services upon a review of the best available scientific information. In any case, because the Services retain discretion to consider a petition that has only substantially complied with the requirements for filing petitions, they retain discretion to consider such petitions in appropriate circumstances, such as where it appears to the Services that expedited listing may be warranted. The Services also have discretion to simply treat them as petitions seeking the species listing on a non-emergency basis.

The Services apply § 424.14(c) to identify those requests that contain all the elements of a petition, so that consideration of the request will be an efficient and wise use of agency resources. A request that fails to meet these elements may be screened out from further consideration, as discussed below, because a request cannot meet the statutory standard for demonstrating that the petitioned action may be warranted if it does not contain at least some information on each of the areas relevant to that inquiry. However, as discussed further below, the screening out of petitions due to missing required information does not constitute a petition finding under Section 4(b)(3)(A) of the Act. In such a situation, the Services will explain to petitioners what information was missing so that the petitioners can have an opportunity to cure the deficiencies in a new petition and obtain a finding on the petition under section 4(b)(3)(A) of the Act.

Information To Be Included in Petitions To List, Delist, or Change the Status of a Listed Species—Paragraph (d)

Section 424.14(d) describes the types of information that are relevant to the Services' determinations as to whether the petition provides substantial scientific or commercial information that the petitioned action may be warranted. Petitioners are advised that compliance with paragraph (c) is the minimum necessary to require the Services to consider their petition, but to provide a more complete and robust petition, petitioners should include as much of the types of information listed in paragraph (d) as possible, to the extent that it is relevant to the type of petition being filed.

The informational elements for listing, delisting, and reclassification petitions in § 424.14(d)(1) through (d)(3) are rooted in the substance of current paragraphs (b)(2)(ii) and (iii). These elements clarify in the regulations the key considerations that are relevant when the Services are determining whether or not the petition presents "substantial scientific or commercial information indicating that the petitioned action may be warranted," which is the standard for making a positive 90-day finding as described in section 4(b)(3)(A) of the Act, 16 U.S.C. 1533(b)(3)(A).

Section 424.14(d)(3) refers to inclusion in a petition of a description of the magnitude and immediacy of threats. This type of information regarding the severity of threats on the species or its habitat is generally needed in conducting status reviews, and is therefore relevant to determining whether the petition presents substantial information indicating that the petitioned action may be warranted. In addition, this information may assist FWS in assessing the listing priority number of species if FWS subsequently makes a warranted-but-precluded finding under FWS' September 21, 1983, guidance, which requires assessing, in part, the magnitude and immediacy of threats (48 FR 43098). In addition to being useful for status reviews, this information should be included to assist in determinations on uplisting requests. While such information may also be useful to NMFS, NMFS has not adopted the 1983 FWS guidance, and so would not apply that guidance to petitions within its jurisdiction.

Section 424.14(d)(4) refers to inclusion in a petition of information on any conservation actions that States, or other parties, have initiated or that are ongoing, that benefit the subject species. Because this information is relevant to an ultimate determination of whether or not listing a species is warranted (the 12-month finding standard), it is indirectly relevant and may be useful in evaluating whether the action may be warranted (the 90-day finding standard).

We add a new § 424.14(d)(5), stating that a petitioner should provide a complete, balanced presentation of facts pertaining to the petitioned species, which would include any information the petitioner is aware of that contradicts claims in the petition. The intent of this provision is not to place an unnecessary burden on petitioners, but rather to encourage petitioners to avoid presenting in a petition only information that supports the claims in the petition. This is particularly true for information publicly available from affected States or Tribes, who often have important and relevant species data and information, as well as special status and concerns with respect to implementation of the Act. Fostering greater inclusion of such data will help ensure that any petition submitted to the Services is based on reliable and unbiased information and does not consist simply of selected data. We find that, to further the purposes of the Act, petitioners should be forthcoming as to the known, relevant facts so that the Services have an accurate basis from which to evaluate the merits of the petition. Fostering a more transparent and informed petition process will ensure that the Services' resources are directed productively and not diverted to matters that only superficially appear meritorious.

Section 424.14(d) does not include the language in current paragraph (b)(2) that describes information a petitioner may include for consideration in designating critical habitat in conjunction with a listing or reclassification. We have deleted these two sentences because, at the initial stage, the Services focus their evaluation of the information to make a finding on whether the petition presents substantial information indicating that the species may warrant listing, delisting, or reclassification. If the Services find that the petition presents substantial information that listing may be warranted and proceeds to initiating a status review, the Services will seek information concerning critical habitat at that time.

Information To Be Included in Petitions To Revise Critical Habitat—Paragraph (e)

Section 424.14(e) sets forth the kinds of information a petitioner should include in a petition to revise a critical habitat designation. The Service's determination as to whether the petition provides "substantial scientific information indicating that the revision may be warranted" (16 U.S.C. 1533(b)(3)(D)(i)) will depend in part on the degree to which the petition includes this type of information.

The items set out at new § 424.14(e) are an expanded and reworded version of the substance of current paragraph (c)(2). Section 424.14(e)(1) advises that, to help justify a revision to critical habitat, it is important to demonstrate that the existing designation includes areas that should not be included or does not include areas that should be included. The petition should discuss the benefits of designating additional areas, or the reasons to remove areas from an existing designation. Additionally, including maps with sufficient detail to clearly identify the particular area(s) being recommended for inclusion or exclusion will be useful to the Services in making a petition finding.

New § 424.14(e)(2), (e)(3), and (e)(4) are drawn from the substance of current paragraphs (c)(2)(i) and (ii), which have been reorganized and clarified. Sections 424.14(e)(2), (e)(3), and (e)(4) clarify that several distinct pieces of information are helpful in analyzing whether any area of habitat should be designated, beginning with a description of the "physical or biological features" that are essential for the conservation of the species and which may require special management. If a petitioner believes that the already-identified physical or biological features in an existing critical habitat designation have been incorrectly identified, the petition should provide information supporting the recognition of a different set of features and explain how the different set of features would lead to identification of different areas as qualifying for inclusion in a designation of occupied critical habitat. (See also our response to comment 47). In other words, petitioners requesting revisions to critical habitat designations need not provide information on which physical or biological features are essential unless the relevant areas were occupied at the time of listing and the petitioners contend that some features recognized at the time of designation as essential are not, or that features not recognized in the designation as essential should be.

Also, paragraphs (e)(3) and (e)(4) of § 424.14 detail the informational needs the Services will have in considering whether the petition presents substantial information indicating that it may be warranted to add to, or remove from, the critical habitat designation specific areas occupied by the species at the timing of listing. Further, we clarify that "features" specifically refers to the "physical or biological features," as described in our recent revision to 50 CFR 424.12 (81 FR 7414; February 11, 2016). Further, to use the same language as the revised 50 CFR 424.12, we replace the clause "(including features that allow the area to support the species periodically, over time)" with "(including characteristics that support ephemeral or dynamic habitat conditions)."

Section 424.14(e)(5) describes the particular informational needs associated with evaluating habitat that was unoccupied at the time of listing—that is, information that fulfills the statutory requirement that any specific areas designated are "essential for the conservation of the species." See section 3(5)(A)(ii) of the Act, 16 U.S.C. 1532(5)(A)(ii).

Section 424.14(e)(6) mirrors the revised § 424.14(d)(5), stating that a petitioner should provide a complete, balanced presentation of facts pertaining to the species' potential critical habitat, which would include any information the petitioner is aware of that contradicts claims in the petition. This provision recognizes that, in availing themselves of the petition process, petitioners seek to direct the Services' focus and resources to particular species.

Responses to Petitions—Paragraph (f)

Section 424.14(f) sets out the possible responses the Services may make to requests. Section 424.14(f)(1) clarifies that a request that fails to satisfy the mandatory elements set forth in paragraph (c) will generally be returned by the Services with an explanation of the reason for the rejection, but without a determination on the merits of the request. In light of the volume of petitions received by the Services, it is critical that we have the option to identify in a reasonable timeframe those requests that on their faces are incomplete, in order to ensure that agency resources are not diverted from higher priorities. Although this authority is implied in the current regulations, making the point explicit in these revised regulations provides additional notice to petitioners and will result in better-quality petitions and more efficient and effective (in terms of species conservation) use of agency resources.

The Services retain discretion to determine whether a request constitutes a petition and to process that petition where the Services determine there has been substantial compliance with the relevant requirements. The Services need to maintain some discretion in order to apply common-sense principles in accepting or rejecting petitions. Petitions will not likely be rejected for minor omissions of the requirements set forth at § 424.14(c). The Services also recognize that not all elements will be as crucial for particular kinds of petitions (*e.g.*, petitions to delist a species due to recovery need not provide information on the validity of the entity; currently-listed species can be assumed to be valid entities as the Services routinely review such matters for listed species under our jurisdiction), and maintain discretion regarding acceptance of petitions accordingly.

We would apply such discretion judiciously. If most of the cited source materials have been provided, the Services may accept the petition and may evaluate the petition without considering those claims for which the source materials have not been provided. Thus, even if the petition is accepted, the absence of cited source materials may make it more likely to result in a finding that the petition does not present substantial information. To avoid rejection of the petition or an increased likelihood of a "not substantial" finding, we encourage the petitioner to include all cited materials with the petition, as this is an important step in substantiating the petitioner's claims. It should not present a hardship to provide the source material that the petitioner used in preparing the petitioned request.

Section 424.14(f)(1) states that the Services will determine whether or not a request contains all of the requisite information for qualifying as a petition "within a reasonable timeframe." Although this does not establish a specific timeframe, the Act already prescribes a number of binding, enforceable deadlines for making petition findings, and we do not intend to create a new one with this provision. Our goal is to minimize the amount of time it will take the Services to review a request and determine whether it qualifies as a petition. We anticipate that the determination can be made within weeks of receiving the request.

The revision to § 424.14(f)(2) confirms that a request that complies with the mandatory requirements will be acknowledged (as required under current 424.14(a)); however, we have removed the requirement to provide the acknowledgement in writing within 30 days of the receipt of the petition. We make this revision to allow the Services greater flexibility in the means and timing of communicating with the petitioner its determination of whether the petition complies with the mandatory requirements. This revision also reflects the fact that, in light of current electronic means of communication, it is more efficient for petitioners to refer to the Services' online lists of active petitions, which are accessible to the public at *http://ecos.fws.gov/ecp/report/table/petitions-received.html* and *http://www.nmfs.noaa.gov,* or on individual species profile pages accessed by searching for the species at *https://www.ecos.fws.gov* and *http://www.nmfs.noaa.gov.* We find that continuing the practice of sending confirmations via formal letter no longer provides the most effective or efficient means of communicating to all interested parties regarding the status of petitions.

Supplemental Information—Paragraph (g)

We clarify in § 424.14(g) that a petitioner submitting supplemental information later in time from their original petition has the option to specify whether or not the information being submitted is intended to be part of the petition. Specifying that the supplemental information is intended to be part of the petition will have the consequence that the Services will be obligated to consider it in the course of reaching a finding on the petition. It will also, however, have the related consequence that the timeframes under section 4 of the Act for when findings are due will be reset and begin to run anew from the time the supplemental information is received. In contrast, if the petitioner does not specify that the information is intended to be part of the petition, the Services will treat the supplemental information as they would any readily available information from any source. As we have explained, the Services have discretion to consider such information as appropriate to place the petition in context, but are not required to consider such information. Because the Act requires that the 90-day finding evaluate whether the petition presents substantial information to indicate that the petitioned action may be warranted, the submission of new information intended to supplement a petition is in effect a new petition. It is thus reasonable and necessary to reset the timeframes when new information intended to supplement the petition is received. The final regulation thus strikes a balance that is fair to petitioners by giving them the choice to determine the consequences of submitting new information.

This provision will ensure the Services have adequate time to consider the supplemental information relevant to a petition and that the process is not interrupted by receipt of new information that may fundamentally change the evaluation. Also, by providing clear notice of this process, the Services are encouraging petitioners to assemble all the information necessary to support the petition prior to sending it to the Services for consideration, further enhancing the efficiency of the petition process.

Findings on a Petition To List, Delist, or Reclassify—Paragraph (h)

Section 424.14(h) explains the kinds of findings the Services may make on a petition to list, delist, or reclassify a species, and the standards to be applied in that process. Section 424.14(h)(1) is drawn largely from current paragraph (b)(1), with some revisions. Most significantly, § 424.14(h)(1)(i) clarifies the substantial-information standard for 90-day findings by defining it as credible scientific and commercial information that would lead a reasonable person conducting an impartial scientific review to conclude that the action proposed in the petition may be warranted. Thus it makes clear that conclusory statements made in a petition without the support of credible scientific or commercial information are not "substantial information." For example, a petition that states only that a species is rare, and thus should be listed, without other credible information regarding its status and threats, likely does not provide substantial information. As demonstrated by the Scott's riffle beetle case (*WildEarth Guardians* v. *Salazar,* No. 10–cv–00091–WYD (D. Colo. Sept. 14, 2011)), the inclusion of this statement clarifies, but does not alter, the Services' standard for evaluating 90-day findings. In that case, FWS made a negative 90-day finding, because the petition did not present any information of any potential threat currently affecting the species or reasonably likely to do so in the foreseeable future, nor did it indicate a population decline. The court rejected a merits challenge to that petition finding, and found that information as to the rarity of a species, without more information, is not "substantial information" that listing the species may be warranted.

In § 424.14(h)(1)(ii), we have added a new sentence to clarify that the Services are not required to consider any supporting materials cited by the petitioner if the cited documents, or relevant excerpts or quotations from the cited documents, are not provided in accordance with paragraph (c)(6) of this section. Additionally, we clarify that the Services may consider information provided in a petition in the context of other information that is readily available at the time it makes a 90-day finding. For purposes of § 424.14(h)(1), the Services recognize that the statute places the obligation squarely on the petitioner to present the requisite level of information to meet the "substantial information" test, and that the Services should not seek to supplement petitions. (See the Columbian sharp-tailed grouse case (*WildEarth Guardians* v. *U.S. Secretary of the Interior,* No. 4:08–CV–00508–EJL–LMB (D. Idaho Mar. 28, 2011)), which provided, among other things, that the petitioner has the burden of providing substantial information.) In order for the Services to find that a petition presents substantial information indicating that the petitioned action may be warranted, the petition should itself present that information. The Services need not resort to supplemental information to bolster, plug gaps in, or otherwise supplement a petition that is inadequate on its face.

However, in determining whether a petition is substantial or not, the Services must determine whether the claims are credible. Therefore, it is appropriate for the Services to consider readily available information that provides context in which to evaluate whether or not the information that a petition presents is timely and up-to-date, and whether it is reliable or representative of the available information on that species, in making its determination as to whether the petition presents substantial information.

The precise range of information considered will vary with circumstances. In a discussion of judicial review of the Secretary's 90-day findings on petitions, a House Conference report states that, when courts review such a decision, the "object of [the judicial] review is to determine whether the Secretary's action was arbitrary or capricious *in light of the scientific and commercial information available* concerning the petitioned action" [emphasis added] (H.R. Conf. Rep. No. 97–835, at 20, reprinted in 1982 U.S.C.C.A.N. 2860, 2862). By requiring courts to evaluate the Secretary's substantial information findings in light of information "available," this statement suggests that the drafters anticipated that the Secretary could evaluate petitions in the context of scientific and commercial information available to the Services, and not limited arbitrarily to the subset of available information that is presented in the petitions. In these regulatory amendments, the Services have crafted a balanced approach that will ensure that the Services may take into account the information readily available to us as context for the information provided in a petition, without opening the door to the type of wide-ranging survey more appropriate for a status review.

Although the Services are mindful that, at the stage of formulating an initial finding, they should not engage in outside research or an effort to comprehensively compile the best available information, they must be able to place the information presented in the petition in context. The Act contemplates a two-step process in reviewing a petition. The 12-month finding is meant to be the more in-depth determination and follows a status review, while the 90-day finding is meant to be a quicker evaluation of a more limited set of information. However, based on our experience in administering the Act, the Services conclude that evaluating the information presented in the petition in a vacuum can lead to inaccurately supported decisions and misdirection of resources away from higher priorities. It would be difficult for the Services to bring informed expertise to their evaluation of the facts and claims alleged in a petition without considering the petition in the context of other information of the sort that the Services have readily available and would routinely consult in the course of their work. It is reasonable for the Services to be able to examine the information and claims included in a petition in light of readily available scientific information prior to committing limited Federal resources to the significant expense of a status review. Some examples of readily available information that the Services may use include information sent to the Services by State wildlife agencies or other parties, State fish and wildlife databases, the Integrated Taxonomic Identification System (ITIS), the International Union for the Conservation of Nature (IUCN), the Intergovernmental Panel on Climate Change (IPCC), stock assessments, and fishery management plans (this list is not all-inclusive).

The information the Services may use may not only be stored in the traditional hard copy format in files, but may also be electronic data files as well, or stored on Web sites created by the Services or other Web sites routinely accessed by the Services. As noted, the range of information considered readily available will vary with circumstances, but could include the information physically held by any office within the Services (including, for example, NMFS Science Centers and FWS Field Offices), and may also include information stored electronically in databases routinely consulted by the Services in the ordinary course of their work. For example, it would be appropriate to consult online databases such as ITIS (*http://www.itis.gov*), a database of scientifically credible taxonomic nomenclature information maintained in part by the Services.

Section 424.14(h)(1)(iii) addresses situations in which the Services have already made a finding on or conducted a review of the listing status of a species, and, after such finding or review, receive a petition seeking to list, delist, or reclassify that species. Such prior reviews constitute information readily available to the Services and provide important context for evaluation of petitions. Although the substantial-information standard applies to all petitions under section 4(b)(3)(A) of the Act, the standard's application is influenced by the context in which the finding is being made. The context of a finding after a status review and determination is quite different from that before any status review has been completed. Further, prior reviews represent a significant expenditure of the Services' resources, and it would be inefficient and unnecessary to require the Services to revisit issues for which a determination has already been made, unless there is a basis for reconsideration. In the case of prior reviews that led to final agency actions (such as final listings, 12-month not warranted findings, and 90-day not-substantial findings), a petition generally would not be found to provide substantial information unless the petition provides new information or a new analysis or interpretation not previously considered in the final agency action. By "new" we mean that the information was not considered by the Services in the prior determination or that the petitioner is presenting a different interpretation or analysis of that data.

These revisions are not meant to imply that the Service's finding on a petition addressing the same species as a prior determination would necessarily be negative. For example, the more time that has elapsed from the completion of the prior review, the greater the potential that substantial new information has become available. As another example, the Services may have concluded a 5-year status review in which we find that a listed species no longer warrants listing, but we have not as yet initiated a rulemaking to delist the species (in other words, have not yet undertaken a final agency action). If we receive a petition to delist that species, in which the petitioner provides no new or additional information than was considered in the 5-year status review, we would likely still find that the petition presents substantial information that the petitioned action may be warranted.

Paragraph (h)(2) is substantially the same as current paragraph (b)(3). Among other changes, we added new language clarifying the standard for making expeditious-progress determinations in warranted-but-precluded findings, including (in paragraph (h)(2)(iii)(B)) a clear acknowledgement that such determinations are to be made in light of resources available, after complying with nondiscretionary duties, court orders, and court-approved settlement agreements to take actions under section 4 of the Act. In this rule, we are redesignating current paragraph (b)(4) as paragraph (h)(3), although we have removed the reference in the current language that "no further finding of substantial information will be required," as it merely repeats statutory language.

In § 424.14(h)(2), we replace the conditional clause "If a positive finding is made" (as we used in our proposed rule published on May 21, 2015 (80 FR 29286)) with "If the Services find that the petition presents substantial information indicating that the petitioned action may be warranted," for clarity, and to avoid introducing an additional, undefined term. We also add clarity in § 424.14(h)(2), by adding the phrase, "At the conclusion of the status review," before the reference to the obligation of the Services to make a 12-month finding.

Findings on a Petition To Revise Critical Habitat—Paragraph (i)

Paragraph (i) explains the kinds of findings that the Services may make on a petition to revise critical habitat. Paragraph (i)(1) is essentially the same as current paragraph (c)(1), and describes the standard applicable to the Service's finding at the 90-day stage. Please refer to the discussion of the "substantial information" standard discussed in the description of § 424.14(h)(1), above. Paragraph (i)(2) specifically acknowledges, consistent with the statute, that a 12-month determination on a petition that presents substantial information indicating that a revision to critical habitat may be warranted may, but need not, take a form similar to one of the findings called for at the 12-month stage in the review of a petition to list, delist, or reclassify species. Section 4(a)(3)(A) of the Act establishes a mandatory duty to designate critical habitat for listed species to the maximum extent prudent and determinable at the time of listing, but provides with respect to subsequent revision of such habitat only that the Services "*may,* from time-to-time thereafter as appropriate, revise such designation" [emphasis added] (16 U.S.C. 1533(a)(3)(A)(ii)).

The Services' broad discretion to decide when it is appropriate to revise critical habitat is evident in the differences between the Act's provisions discussing petitions to revise critical habitat, on the one hand, and the far more prescriptive provisions regarding the possible findings that can be made at the 12-month stage on petitions to list, delist, or reclassify species, on the other. Section 4(b)(3)(B) of the Act includes three detailed and exclusive options for 12-month findings on petitions to list, delist, or reclassify species. In contrast, section 4(b)(3)(D)(ii) requires only that, within 12 months of receipt of a petition to revise critical habitat that has been found to present substantial information that the petitioned revision may be warranted, the Secretaries (acting through the Services) determine how they intend "to proceed with the requested revision" and promptly publish notice of such intention in the **Federal Register**. The differences in these subsections indicates that the statute does not mandate that the 12-month finding procedures for petitions to list, delist, or reclassify species be followed in determining how to proceed with petitions to revise critical habitat. See *Sierra Club* v. *U.S. Fish and Wildlife Service,* 930 F. Supp. 2d 198 (D.D.C. 2013) (leatherback sea turtle) (12-month determinations on petitions to revise are committed to the agency's discretion by law, and thus unreviewable under the Administrative Procedure Act); and *Morrill* v. *Lujan,* 802 F. Supp. 424 (S.D. Ala. 1992) (revisions to critical habitat are discretionary); see also *Barnhart* v. *Sigman Coal Co., Inc.,* 122 S. Ct. 941, 951 (2002) (noting that "it is a general principle of statutory construction that when 'Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'") (citing *Russello* v. *United States,* 464 U.S. 16, 23 (1983)); *Federal Election Commission* v. *National Rifle Ass'n of America,* 254 F.3d 173, 194 (D.C. Cir. 2001) (same).

Further, the legislative history for the 1982 amendments that added the petition provisions to the Act confirms that Congress intended to grant discretion to the Services in determining how to respond to petitions to revise critical habitat. After discussing at length the detailed listing petition provisions and their intended meaning, Congress said of the critical habitat petition requirements, "Petitions to revise critical habitat designations may be treated differently" (H.R. Rep. No. 97–835, at 22 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2860, 2862).

The Services may find in particular situations that terminology similar to that used in the listing-petition provisions is useful for explaining their determination at the 12-month stage of how they intend to proceed on a petition to revise critical habitat. For example, the Services have, at times, used the term "warranted" to indicate that requested revisions of critical habitat would satisfy the definition of critical habitat in section 3 of the Act. However, use of the listing-petition terms in a determination of how the Services intend to proceed on a petition to revise critical habitat would not mean that the associated listing-petition procedures and timelines apply or are required to be followed with respect to the petition. For example, if the Services find that a petitioned revision of critical habitat is, in effect, "warranted," in that the areas would meet the definition of "critical habitat," that finding would not require the Services to publish a proposed rule to implement the revision in any particular timeframe. Similarly, a finding on a petition to revise critical habitat that uses the phrase "warranted but precluded," or a functionally similar phrase, to describe the Secretary's intention would not trigger the requirements of section 4(b)(3)(B)(iii) or section 4(b)(3)(C) (establishing requirements to make particular findings, to implement a monitoring system, etc.).

Although the Services have discretion to determine how to proceed with a petition to revise critical habitat, the Services think that certain factors regarding conservation and recovery of the species at issue are likely to be relevant and potentially important to most such determinations. Such factors may include, but are not limited to: The status of the existing critical habitat for which revisions are sought (*e.g.,* when it was designated, the extent of the species' range included in the designation); the effectiveness or potential of the existing critical habitat to contribute to the conservation of the listed species at issue; the potential conservation benefit of the petitioned revision to the listed species relative to the existing designation; whether there are other, higher-priority conservation actions that need to be completed under the Act, particularly for the species that is the subject of the petitioned revision; the availability of personnel, funding, and contractual or other resources required to complete the requested revision; and the precedent that accepting the petition might set for subsequent requested revisions.

At § 424.14(i)(2), compared to our revised proposal of the rule (81 FR 23448; April 21, 2016), we add the introductory clause, "If the Services find that the petition presents substantial information that the requested revision may be warranted," for clarity.

Petitions To Initially Designate Critical Habitat and Petitions for 4(d), 4(e), and 10(j) Rules—Paragraph (j)

Paragraph (j) is substantially the same as current paragraph (d), which refers to petitions to "designate critical habitat or adopt special rules." In this regulation, for clarity, we expressly refer to the types of petitions that are covered, which are those requesting that the Services initially designate critical habitat or adopt rules under sections 4(d), 4(e), or 10(j) of the Act.

Withdrawn Petitions—Paragraph (k)

Paragraph (k) describes the process for a petitioner to withdraw a petition, and the Services' discretion to discontinue action on the withdrawn petition. Although the Services may discontinue work on a 90-day or 12-month finding for a petition that is withdrawn, in the case of a petition to list a species, the Services may use their own process to evaluate whether the species may warrant listing and whether it should become a candidate for listing. In the case of the withdrawal of a petition to delist, uplist or downlist a species, the Services may use the 5-year review process or the annual candidate review to further evaluate the status of the species, or elect to consider the issue at any time.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is consistent with E.O. 13563, and in particular with the requirement of retrospective analysis of existing rules, designed "to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Director of the U.S. Fish and Wildlife Service also certifies that this rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

This rule will revise and clarify the regulations governing documentation needed by the Services in order to effectively and efficiently evaluate petitions under the Act. While some of the changes may require petitioners to expend some time (such as notifying State(s)) and effort (providing complete petitions), we do not expect this will prove to be a hardship, economically or otherwise. Further, following a review of entities that have petitioned the Services, we find that most are individuals or organizations that are not considered small business entities. And while small entities may choose to petition the Services, any economic effects would be minimal because any increase in costs (such as notification to States or electronic filing of the petition versus hardcopy should they choose) will be nominal, *i.e.*, not a significant economic impact. As a result, we have determined that these revised regulations will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the *Regulatory Flexibility Act* section above, this rule will not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments will not be affected because the rule will not place additional mandates on any city, county, or other local municipalities.

(b) This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, this rule is not a "significant regulatory action"' under the Unfunded Mandates Reform Act. This rule will impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This rule will not pertain to "taking" of private property interests, nor will it directly affect private property. A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of endangered and threatened species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with E.O. 13132, we have considered whether this rule will have significant Federalism effects and have determined that a federalism summary impact statement is not required. This rule pertains only to the petition process under the Endangered Species Act, and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This rule will clarify the petition process under the Endangered Species Act.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments," November 6, 2000), the Department of the Interior Manual at 512 DM 2, the Department of Commerce (DOC) Tribal Consultation and Coordination Policy (May 21, 2013), DOC Departmental Administrative Order (DAO) 218–8, and NOAA Administrative Order (NAO) 218–8 (April 2012), we have considered possible effects of this final rule on federally recognized Indian Tribes. Following an exchange of information with tribal representatives, we have determined that this rule, which clarifies the general process for submission and review of petitions, does not have "tribal implications" as defined in Executive Order 13175. This rule will assist petitioners in providing complete petitions and enhance the efficiency and effectiveness of the petition process to support species conservation. We will continue to collaborate with Tribes on issues related to federally listed species and their habitats and work with them as we implement the provisions of the Act. See Joint Secretarial Order 3206 ("American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," June 5, 1997).

Paperwork Reduction Act of 1995 (PRA)

This final rule contains information collections for which the Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We (National Marine Fisheries Service and U.S. Fish and Wildlife Service, Services) may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements associated with this rule and assigned OMB Control Number 1018–0165, which expires September 30, 2019.

Any interested person may submit a written petition to the Services requesting to add a species to the Lists of Endangered or Threatened Wildlife and Plants (Lists), remove a species from the Lists, change the listed status of a species, or revise the boundary of an area designated as critical habitat. OMB has approved the following information collection:

Petitions. § 424.14(c) of this rule specifies the information that must be included in petitions.

Notification of States. § 424.14(b) requires that petitioners must notify applicable States of their intention to submit a petition to list, delist, or change the status of a species, or to revise critical habitat. This notification must be made at least 30 days prior to submission of the petition. Copies of the notification letters must be included with the petition.

The burden table below includes information for both NMFS and FWS. Based on the average number of species per year over the past 5 years regarding which FWS and NMFS were petitioned, we estimate the average annual number of petitions received by both Services combined to be 50 (25 for FWS and 25 for NMFS). Because each petition will be limited to a single species under the regulations, the average number of species included in petitions over the past 5 years may be more accurate than the average number of petitions as a gauge of the number of petitions we are likely to receive going forward. This estimate of the number of petitions the Services will receive in the future may be generous. We estimate that there will be a need for a petitioner to notify an average of 10 States per petition. Many species are narrow endemics and may only occur in one State, but others are wide-ranging and may occur in many States. However, we are erring on the side of over-estimating the potential number of States petitioners will need to notify on average.

OMB Control No: 1018–0165.

Title: Petitions, 50 CFR 424.14.

Service Form Number(s): None.

Description of Respondents: Individuals, businesses, or organizations.

Respondent's Obligation: Required to obtain or retain a benefit.

Estimated Annual Number of Respondents: 50.

Frequency of Collection: On occasion.

Activity/requirement	Total annual responses	Completion time per response (hours)	Total annual burden hours
Petitioner—prepare and submit petitions	50	120	6,000
Petitioner—notify States	500	1	500
Total	550	....	6,500

Total Annual Nonhour Cost Burden: $1,000.00, based on $20 per petition (for materials, printing, postage, data equipment maintenance, etc).

During the proposed rule stage, we solicited comments for a period of 30 days on the information collection requirements. We received one comment.

Comment: The commenter agreed that most petitions can be prepared in approximately 120 hours, but more complex petitions can take much more time to assemble the information within the petition.

Response: We agree that in some cases, time to prepare a petition submission may be considerably greater than our estimate, while in other cases, it may be less. We believe 120 hours is a reasonable estimate for the average petition, acknowledging that there could be a small proportion of submissions that require more or less time. We have retained our estimate of 120 hours. All comments on the rule are addressed in the preamble above.

The public may comment, at any time, on any aspect of the information collection requirements in this rule and may submit any comments to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email).

National Environmental Policy Act

We have analyzed this regulation in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 1–6 and 8), and NOAA Administrative Orders (NAOs) 216–6A and 216–6. Our analysis includes evaluating whether this action is administrative, legal, technical, or procedural in nature and, therefore, a categorical exclusion applies.

Following a review of the changes to the regulations at 50 CFR 424.14 and our requirements under NEPA, we find that the categorical exclusion found at 43 CFR 46.210(i) applies to these regulation changes. At 43 CFR 46.210(i), the Department of the Interior has found that the following category of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: "Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature."

NAO 216–6 contains a substantially identical exclusion for "policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature" (§ 6.03c.3(i)).

At the time DOI's categorical exclusion was promulgated, there was no preamble language that would assist in interpreting what kinds of actions fall within the categorical exclusion. However, in 2008, the preamble for a language correction to this categorical exclusion gave as an example of an action that would fall within the exclusion the issuance of guidance to applicants for transferring funds electronically to the Federal Government. In addition, an example of a recent **Federal Register** notice invoking this categorical exclusion was a final rule that established the timing requirements for the submission of a Site Assessment Plan or General Activities Plan for a renewable energy project on the Outer Continental Shelf (78 FR 12676; February 26, 2013). These regulations fell within the categorical exclusion because they affected the process inherent to an agency action rather than the agency action itself, or clarified, rather than changed, the substance of the agencies' analyses or outcomes of their decisions.

The changes to the petition regulations are similar to these examples of actions that are fundamentally administrative, technical, and procedural in nature. The changes to the regulations at 50 CFR 424.14 clarify the procedures for submitting and evaluating petitions under Section 4 of the Act. In addition, the regulation revisions provide transparency for the practices and interpretations that the Services have adopted and applied as a result of case law or pragmatic considerations. The Services also make minor wording and formatting revisions throughout the regulations to reflect plain-language standards. The regulation revision as a whole carries out the requirements of Executive Order 13563 because, in this rule, the Services have analyzed existing rules retrospectively "to make the agencies' regulatory program more effective or less burdensome in achieving the regulatory objectives."

We also considered whether any "extraordinary circumstances" apply to this situation, such that the DOI categorical exclusion would not apply. See 43 CFR 46.215 ("Categorical Exclusions: Extraordinary Circumstances"). We determined that no extraordinary circumstances apply. Although the final regulations would revise the implementing regulations for section 4 of the Act to provide greater clarity to petitioners on information that is likely to improve efficiency and accuracy in processing petitions, the effects of these proposed changes would not "have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species," as nothing in the revised regulations is expected to determine or change the outcome of any status review of a species or any decision on a petition to revise critical habitat. Furthermore, the revised regulations do not "[e]stablish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects" (43 CFR 46.215(e)). None of the extraordinary circumstances in 43 CFR 46.215(a) through (l) apply to the revised regulations.

Nor would the final regulations trigger any of the extraordinary circumstances of NAO 216–6. This rule does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, will not result in uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, will not have significant cumulative impacts, and will not have any adverse effects upon endangered or threatened species or their habitats (§ 5.05c).

We completed an Environmental Action Statement for the Categorical Exclusion for the revised regulations in 50 CFR 424.14.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened species.

Regulation Promulgation

Accordingly, we amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

■ 1. The authority citation for part 424 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. Add § 424.03 to read as follows:

§ 424.03 Has the Office of Management and Budget approved the collection of information?

The Office of Management and Budget reviewed and approved the information collection requirements contained in subpart B and assigned OMB Control No. 1018–0165. We use the information to evaluate and make decisions on petitions. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed at 50 CFR 2.1(b).

■ 3. Revise § 424.14 to read as follows:

§ 424.14 Petitions.

(a) *Ability to petition.* Any interested person may submit a written petition to the Services requesting that one of the actions described in § 424.10 be taken for a species.

(b) *Notification of intent to file petition.* For a petition to list, delist, or reclassify a species, or for petitions to revise critical habitat, petitioners must provide notice to the State agency responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs. This notification must be made at least 30 days prior to submission of the petition. This notification requirement shall not apply to any petition submitted pertaining to a species that does not occur within the United States.

(c) *Requirements for petitions.* A petition must clearly identify itself as such, be dated, and contain the following information:

(1) The name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner;

(2) The scientific name and any common name of a species of fish or wildlife or plants that is the subject of the petition. Only one species may be the subject of a petition, which may include, by hierarchical extension based on taxonomy and the Act, any subspecies or variety, or (for vertebrates)

any potential distinct population segments of that species;

(3) A clear indication of the administrative action the petitioner seeks (*e.g.*, listing of a species or revision of critical habitat);

(4) A detailed narrative justifying the recommended administrative action that contains an analysis of the information presented;

(5) Literature citations that are specific enough for the Services to readily locate the information cited in the petition, including page numbers or chapters as applicable;

(6) Electronic or hard copies of supporting materials, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*, publications, maps, reports, letters from authorities) cited in the petition;

(7) For a petition to list, delist, or reclassify a species, information to establish whether the subject entity is a "species" as defined in the Act;

(8) For a petition to list a species, or for a petition to delist or reclassify a species in cases where the species' range has changed since listing, information on the current and historical geographic range of the species, including the States or countries intersected, in whole or part, by that range; and

(9) For a petition to list, delist or reclassify a species, or for petitions to revise critical habitat, copies of the notification letters or electronic communication which petitioners provided to the State agency or agencies responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition currently occurs.

(d) *Information to be included in petitions to add or remove species from the lists, or change the listed status of a species.* The Service's determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information:

(1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available;

(2) Identification of the factors under section 4(a)(1) of the Act that may affect the species and where these factors are acting upon the species;

(3) Whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the Act may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are;

(4) Information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and

(5) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.

(e) *Information to be included in petitions to revise critical habitat.* The Services' determinations as to whether the petition provides substantial scientific information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information:

(1) A description and map(s) of areas that the current designation does not include that should be included, or includes that should no longer be included, and a description of the benefits of designating or not designating these specific areas as critical habitat. Petitioners should include sufficient supporting information to substantiate the requested changes, which may include GIS data or boundary layers that relate to the request, if appropriate;

(2) A description of physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

(3) For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at time it was listed, information indicating that the specific areas contain one or more of the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species and may require special management considerations or protection. The petitioner should also indicate which specific areas contain which features;

(4) For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species, or that these features do not require special management considerations or protection;

(5) For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species; and

(6) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.

(f) *Response to petitions.* (1) If a request does not meet the requirements set forth at paragraph (c) of this section, the Services will generally reject the request without making a finding, and will, within a reasonable timeframe, notify the sender and provide an explanation of the rejection. However, the Services retain discretion to process a petition where the Services determine there has been substantial compliance with the relevant requirements.

(2) If a request does meet the requirements set forth at paragraph (c) of this section, the Services will acknowledge receipt of the petition by posting information on the respective Service's Web site.

(g) *Supplemental information.* If the petitioner provides supplemental information before the initial finding is made and states that it is part of the petition, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received.

(h) *Findings on petitions to add or remove a species from the lists, or change the listed status of a species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to add a species to the lists, remove a species from the lists, or change the listed status of a species, the Services will make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The Services will publish the finding in the **Federal Register**.

(i) For the purposes of this section, "substantial scientific or commercial information" refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered "substantial information."

(ii) In reaching the initial finding on the petition, the Services will consider the information referenced at paragraphs (c), (d), and (g) of this section. The Services may also consider information readily available at the time the determination is made. The Services are not required to consider any supporting materials cited by the petitioner if the cited document is not provided in accordance with paragraph (c)(6) of this section.

(iii) The "substantial scientific or commercial information" standard must be applied in light of any prior reviews or findings the Services have made on the listing status of the species that is the subject of the petition. Where the Services have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on the Services' own initiative), the Services will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action, a petitioned action generally would not be considered to present substantial scientific and commercial information indicating that the action may be warranted unless the petition provides new information not previously considered.

(2) If the Services find that a petition presents substantial information indicating that the petitioned action may be warranted, the Services will commence a review of the status of the species concerned. At the conclusion of the status review and within 12 months of receipt of the petition, the Services will make one of the following findings:

(i) The petitioned action is not warranted, in which case the Service shall publish a finding in the **Federal Register**.

(ii) The petitioned action is warranted, in which case the Services shall publish in the **Federal Register** a proposed regulation to implement the action pursuant to § 424.16; or

(iii) The petitioned action is warranted, but:

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or change the listed status of species; and

(B) Expeditious progress is being made to list, delist, or change the listed status of qualified species, in which case such finding will be published in the **Federal Register** together with a description and evaluation of the reasons and data on which the finding is based. The Secretary will make any determination of expeditious progress in relation to the amount of funds available after complying with nondiscretionary duties under section 4 of the Act and court orders and court-approved settlement agreements to take actions pursuant to section 4 of the Act.

(3) If a finding is made under paragraph (h)(2)(iii) of this section with regard to any petition, the Services will, within 12 months of such finding, again make one of the findings described in paragraph (h)(2) of this section with regard to such petition.

(i) *Findings on petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Services will make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Services will publish such finding in the **Federal Register**.

(i) For the purposes of this section, "substantial scientific information" refers to credible scientific information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the revision proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific information will not be considered "substantial information."

(ii) The Services will consider the information referenced at paragraphs (c), (e), and (g) of this section. The Services may also consider other information readily available at the time the determination is made in reaching its initial finding on the petition. The Services are not required to consider any supporting materials cited by the petitioner if the cited documents are not provided in accordance with paragraph (b)(6) of this section.

(2) If the Services find that the petition presents substantial information that the requested revision may be warranted, the Services will determine, within 12 months of receiving the petition, how to proceed with the requested revision, and will promptly publish notice of such intention in the **Federal Register**. That notice may, but need not, take a form similar to one of the findings described under paragraph (h)(2) of this section.

(j) *Petitions to designate critical habitat or adopt rules under sections 4(d), 4(e), or 10(j) of the Act.* The Services will conduct a review of petitions to designate critical habitat or to adopt a rule under section 4(d), 4(e), or 10(j) of the Act in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

(k) *Withdrawal of petition.* A petitioner may withdraw the petition at any time during the petition process by submitting such request in writing. If a petition is withdrawn, the Services may, at their discretion, discontinue action on the petition finding, even if the Services have already made a 90-day finding that there is substantial information indicating that the requested action may be warranted.

Dated: September 15, 2016.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Dated: September 12, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–23003 Filed 9–26–16; 8:45 am]

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* **Editorial Note:** Proclamation number 9494 will not be used because a proclamation numbered 9494 appeared on the Public Inspection List on Friday September 16, 2016, but was withdrawn by the issuing agency before publication in the **Federal Register.**

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H.R. 3969/P.L. 114–220
To designate the Department of Veterans Affairs community-based outpatient clinic in Laughlin, Nevada, as the "Master Chief Petty Officer Jesse Dean VA Clinic". (Sept. 23, 2016; 130 Stat. 846)

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